

CIVIL GOVERNMENT
TOWNES



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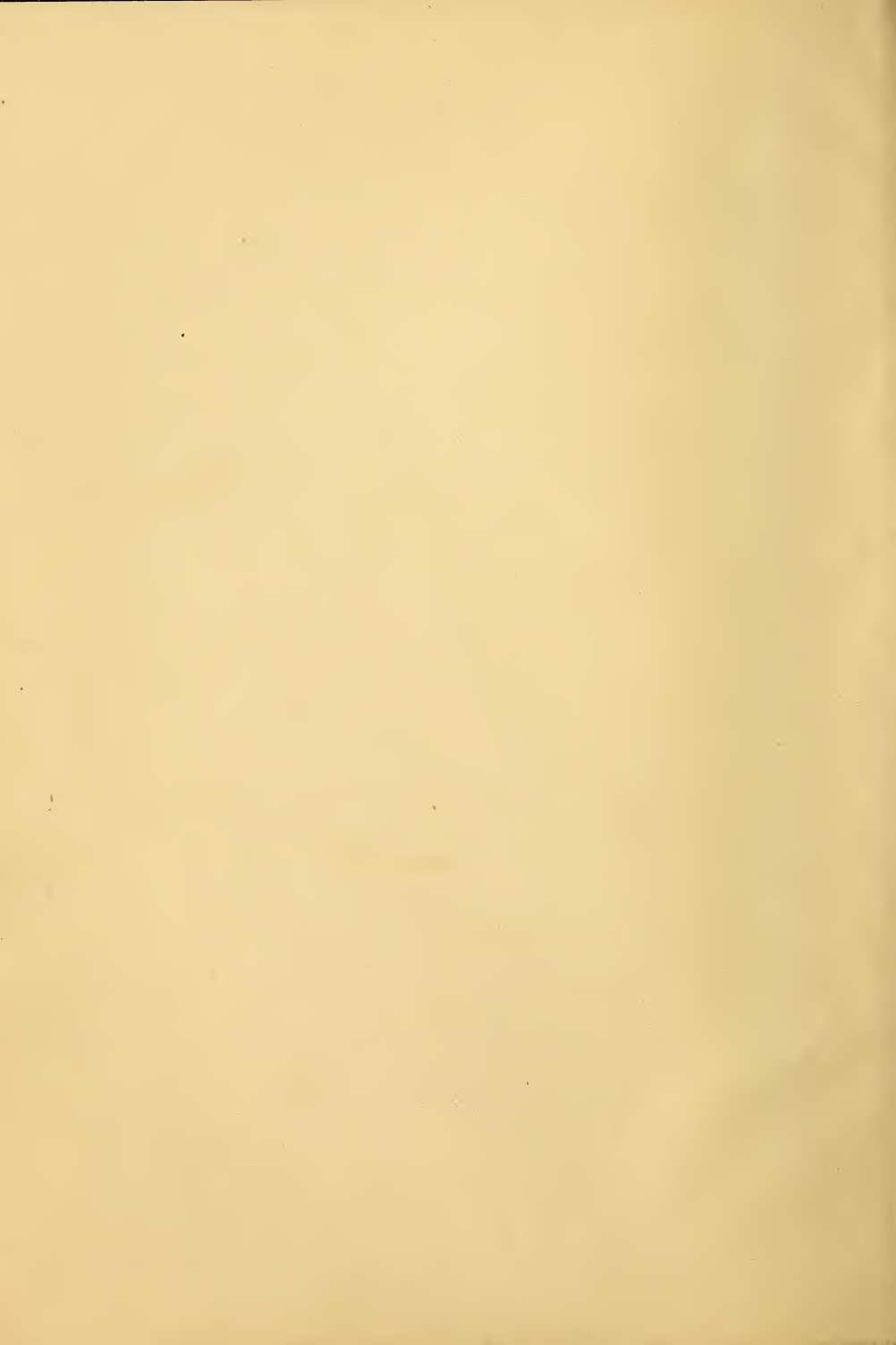
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CIVIL GOVERNMENT *in*
THE UNITED STATES
and in THE STATE
OF TEXAS

A Text Book on Civics

BY

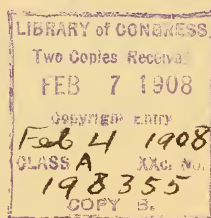
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CONTENTS.

Part One—Principles of Government.

CHAPTER I.—General Conception of Government.....	1
CHAPTER II.—Forms of Government	12
CHAPTER III.—The Development of Constitutional Government	24
CHAPTER IV.—Necessity for Different Departments of Government	32
CHAPTER V.—Important Powers and Duties of Sov- ereignty and Government	43
CHAPTER VI.—Relation of the Individual to Sov- ereignty and Government	57
CHAPTER VII.—Political Parties	68

Part Two—Early Government in America.

CHAPTER VIII.—Government in the Colonies and Un- der the Confederation	83
CHAPTER IX.—The Preparation and Adoption of the Constitution of the United States	93

Part Three—The United States of America.

CHAPTER X.—General Nature of the United States Government and its Relations to the States Com- posing it	101
CHAPTER XI.—Legislative Department of the United States Government	113
CHAPTER XII.—The Powers of Congress	127
CHAPTER XIII.—Legislative Department—The Pow- ers of Congress (Continued)	140
CHAPTER XIV.—The Executive Department of the Federal Government	156

CHAPTER XV.—Judicial Department of the Federal Government	168
CHAPTER XVI.—Restrictive Provisions of the Federal Constitution	179
CHAPTER XVII.—Guarantees in the Federal Constitution to the States and to the Citizens of the States and of the United States	196

Part Four—Government of the States, With Particular Reference to Texas.

CHAPTER XVIII.—The State Governments	207
CHAPTER XIX.—Brief Historical Sketch of Texas	220
CHAPTER XX.—The Constitution of 1876	236
CHAPTER XXI.—The Legislative Department	249
CHAPTER XXII.—The Executive Department	259
CHAPTER XXIII.—The Judicial Department	271
CHAPTER XXIV.—Restrictive Provisions of the Constitution of Texas	289
CHAPTER XXV.—Public Schools of Texas	298
CHAPTER XXVI.—Miscellaneous Provisions of the State Constitution	315

Part Five—Municipal Law.

CHAPTER XXVII.—The Nature, Subject-Matter, Source, Formation, Evidence, Results and Classification of Municipal Laws	347
CHAPTER XXVIII.—Legal Rights and Their Classification	356
CHAPTER XXIX.—Some of the More Important Legal Doctrines and Institutions	369

PREFACE.

This book has been written for use in the public schools in Texas. It deals with Civil Government in the dual form in which it exists in our American Institutions. The subject is presented in five parts. Part One treats of the General Principles of Government. Part Two, the Governments in the Colonies, and during the Confederation. Part Three, The United States. Part Four, the State Government in Texas, and Part Five, Some General Doctrines of Municipal Law.

This arrangement is believed to be the most natural and convenient, and to give to the student the best opportunity to master the subject in all its phases.

These general principles are the real spirit and genius of our institutions, of which our two Governments are the outgrowth and embodiment. These principles made our forms of government not only possible, but practical and successful, but they worked slowly. It is therefore necessary to go back to the beginning of government in America and trace their processes of development through the Colonial Governments and the Confederation up to the State and the Union. This chronological order is important. The pupil should understand that the States preceded and created the Union. He should then be acquainted with the manner in which the United States Government was created, its nature, and the scope and limits of its powers.

He should further understand the effect of all this upon the respective State Governments, their present powers and functions, and their relations to the United States and to individuals. In presenting these last matters it is earnestly believed that it is better to deal specifically with some one State, and to present its government in concrete form. It is questionable whether a book which is so written as to be applicable equally to all the States can be the best for any one of them. As this text is prepared for use in Texas it treats of Government in that State, in the belief that this presentation should be the best for Texas schools. The study of government necessarily involves a consideration of its purposes and results, and as these are accomplished through laws, it seems that a complete treatment of the subject requires at least a brief presentation of some of the leading legal doctrines and rules. This is the object of Part Five, under the head of Municipal Law.

THE AUTHOR.

AUSTIN, TEXAS, *January 25, 1908.*

PART ONE.

PRINCIPLES OF GOVERNMENT.

CHAPTER I.

GENERAL CONCEPTION OF GOVERNMENT.

General Idea. To govern is to control, to regulate, to cause one who is governed to obey the will of one who governs.

Ideas Implied In. Governing therefore implies two persons: a governor, and one governed; the making of rules by the first for the control of the second, and the securing of obedience to these rules from the one subject to them.

Making Rules. The governing person must exercise his judgment and will in determining what the other is to do. This determination, when formed and announced, becomes a rule of action to which the person governed must submit his will, and by which he must regulate his conduct.

Communicating Rules. It is clear that it would be unjust to the one subject to control, for the one governing to make rules which he does not communicate to the one to be governed, and yet to hold him responsible for disobedience in breaking them. On the other hand, it would be unjust to the one having the right to govern for the one subject to government to be excused from obedience because he would not inform himself of rules which had been properly published.

Hence we find that all laws made for the government of a people should be published before obedience to them is required, and furthermore, that no one is excused for disobedience because he has not taken the pains to actually inform himself regarding these after they are published. This is what is meant when we say that ignorance of the law never excuses one for breaking it.

Interpreting Rules. Frequently the meaning of a rule is doubtful; different individuals may construe it differently. Hence, if every one subject to the rule is to be governed alike by it, there must be some way by which to decide authoritatively what the rule means. This is interpreting or construing the rule. This is always done by him whose will is expressed in the rule. The interpretation placed upon it by him must be accepted by all others.

Applying Rules. If those who are subject to the rule always know, properly understand, and willingly obey it, the matters we have just discussed would complete the process of governing. But quite frequently rules are not obeyed, and hence there must be provision made for ascertaining when disobedience occurs. This can be done only by investigating the conduct of those suspected of disobedience and by comparing this conduct with the rule. If it conforms to the rule, there is no disobedience; if it does not conform, there is. By such comparison each person's guilt or innocence is ascertained and declared.

This bringing together of rule and conduct is applying the general rules to individuals and passing judgment upon them.

Enforcing Penalties for Disobedience. Conviction of disobedience does not of itself insure enforcement of law. The process must go further and inflict upon those

who have been convicted such punishment as is appropriate to the wrongs committed. Inflicting punishment for past wrongs cannot change the fact that the law has been broken, but it tends to prevent future violations not only by those punished, but also by others.

Illustrations. All these conditions are present in school government. The teacher is the governing body; the pupils are those to be governed. The teacher makes rules and communicates them to the pupils. Some of the pupils obey; others do not. As to the first, the end of government is accomplished, and there is no need for further action. But as to the second, government has so far failed, and to make it effective enforcement is necessary. So the teacher must investigate the conduct of those suspected of disobedience, judge them by the rules, and punish those found to be guilty.

We find the same principles underlying all competitive games. Those having authority make and publish rules by which certain games are to be played. These are binding upon all who undertake to play in such games, but there are always some who will not voluntarily obey the rules. Therefore the makers of the rules, anticipating this, provide for the selection of officers whose duty it is to watch the game, detect disobedience, and inflict the proper penalties.

Necessity for Government. Government is necessary to the general well-being of every people. Man is a social animal. He neither will nor can live alone. Each individual is dependent upon others for his comfort and development, if not for his life. On the other hand, each has the capacity to disturb and injure others. Unfortunately there are some who are more disposed to injure others than to properly control themselves. Hence there must be some governing body, having and exercising con-

trol over individuals, severally and collectively, in order to restrain them from unduly injuring one another or the community at large. If in any community every one were free to do just as he pleased, there could be no order nor security. The enjoyment of life, liberty, and property by each individual would depend entirely upon his own capacity to protect himself. Liberty and property would in fact lose their meaning, and life would be stripped of all that makes it desirable.

Political Power. The power within any people which makes and enforces the laws by which that people is governed, and which protects it from outside interference, is called political power.

Subject Matter of Political Power. In advanced communities this power does not undertake to control men in everything that they may feel, think, say, or do, but only in those matters and to such extent as is necessary in order to protect each individual in his just and equal rights, and the community at large from disorder. To state it differently, political power extends only to such conduct on the part of those subject to it as is injurious to the just and equal rights of other individuals, or to the general welfare of the community.

Purpose of Government. The purpose of government is to protect each individual and the general public from undue and unjust interference by others. This enables each to work out his own development along his chosen lines of action, so long as he does not in so doing unjustly encroach upon the equal and similar rights of others.

It is often found that the best and surest means of protection against individuals is to develop them to such a state of self-respect and self-helpfulness as to relieve

them from the temptation to injure others, or to enable them to resist such temptation if it should be presented.

Sovereignty. A certain amount of political power is sovereignty. How much of such power is necessary to entitle it to that designation is doubtful. This is one of the questions upon which theory and practice are hard to reconcile.

The theorist says that to be sovereign, political power must be supreme and unlimited. It is certain that such power as this is sovereign. Still, the practical question arises, may not power limited in some respects still be sovereign? If we answer this in the negative, do we not prove too much? Under such a definition, has there ever been or could there ever be a sovereign? Has there ever been a state whose power was not limited as to territory? Rome boasted that she was Mistress of the World, yet there were always outlying districts over which her power did not extend. It seems that if we are to deal with sovereignty as a practical thing, we must accept territorial limitations upon it. Is this the only limitation which can be admitted? Must sovereignty necessarily be unlimited as to subject-matter? May not political power which is the highest and ultimate power over designated public affairs be justly termed sovereign as to those affairs, though there may be other matters which affect the same people over which it has no authority? Practically it seems that the people of the United States and of the several States have answered this question in the affirmative. In our American institutions we have the people of the United States exercising political power over designated matters, operating through the United States Government; and the people of the respective States exercising political powers over all matters not

within the jurisdiction of the people and Government of the United States, and operating through their respective State Governments. The jurisdiction of the people of the United States and of their Government extends throughout the territory of all the States, and embraces all persons within them, but it includes only such matters as are given over to this people and this Government in the Federal Constitution. The jurisdiction of the people of each State and of their Government extends to so much of the territory of the United States as is within the boundaries of the particular State, and to so many of the people of the United States as live within that State. It does not include those matters given over to the people of the United States and their Government; but over all other matters it is supreme. So we have two peoples and two governments operating in the territory and over the inhabitants of each State; yet each people and each government is limited as to the matters over which its powers extend. Each within the sphere of its political activity is the highest and uncontrolled power, subject to no other authority and accountable to no one for its conduct. Each is equally without power as to the matters properly within the jurisdiction of the other. This is the practical condition in which the citizens of the United States are placed, and from which there is no escape except by revolution. Must we not, then, either accept this idea of sovereignty—limited as to subject-matter, or agree that there is no sovereign power in our American institutions? The Constitutions of the United States and of the several States are based upon the theory of sovereign power over limited subject-matter, and the Supreme Courts of the United States and the several States hold to and announce the same doctrine. On such authority we may safely accept it.

The Seat of Sovereignty. In different peoples sovereignty is seated or vested in different persons. In some, it is in one individual; in others, in more than one, but yet a small number; in others, in a large proportion of those governed; and, perhaps, in a very few instances, in all of those governed.

These differences in the location of sovereignty are the principal distinctions which separate the different forms of government. We are, however, concerned with them now only so far as they affect the necessity for organization by sovereignty for the purpose of exercising its powers.

Organization Where All Political Power is in One Person. In those peoples in which sovereign power is vested without limitation in one individual, *he* can exercise these powers to a large extent in person. Therefore there is no need for extensive organization. What the sovereign wills is law, and he can apply and enforce this law at his pleasure. This is the extreme of centralized power, and results in the simplest, though far from the best, form of government. This condition, or something approaching it, has existed at some time in almost all countries of which we have any knowledge.

Organization Where Political Power is Distributed Among a Few. When sovereign power is vested in more than one person, even though the number is small, some arrangement for concerted action becomes necessary. In such a people the law represents the joint will of all those invested with sovereignty, not the will of a single individual. This joint will can only be developed and ascertained by concert of action. After their joint will is ascertained they must act together in applying and enforcing it. Entering into a common understanding as

to the manner of accomplishing all this is simply organizing for the exercise of their political power, or of governing.

Organization Where Political Power is Widely Distributed. In many peoples sovereign power is distributed among a large number of persons, frequently among thousands, and in some cases among millions. It is manifestly impossible for such numbers as these to continuously act together in the exercise of their powers. Governing is a continuous process. These large numbers therefore must either abandon the undertaking as impracticable, or devise some method of organization by which the ordinary exercise of these powers can be entrusted to a few, leaving the great body of the people free to go about their usual occupations. On the other hand, if all political power were given over to the few, this would be limiting sovereignty to those thus endowed, and the community would thereby be placed in the class just considered. How can these difficulties be avoided and the desired end be accomplished?

The world struggled long to find a practical answer to this perplexing question. The best yet given is Representative Democracy. This is the form of political organization in which sovereign power is vested in and retained by all or by a large proportion of those governed, who act personally and directly in the exercise of their greatest and most important functions, but who delegate to certain of their number authority to represent and act for them in the ordinary processes of governing. This organization is more complex than is required in those communities in which all power is in an individual or in a small number. Its end, however, is the same: to enable those vested with political power to exercise it in the

control of those subject to such power; in other words, to enable sovereignty to govern.

Definition of a Government. As the sole end designed by sovereignty in organizing these agencies is to enable it to govern, and as the actual operation of these agencies is governing, it is quite natural to call the system of these agencies a Government.

We may, therefore, define a Government as the system of agencies which sovereignty creates and maintains for the purpose of exercising its powers of control over those subject to it.

Illustrations. The Government of the United States means all the agencies created by and under the Federal Constitution through which the people of the United States exercise their political power over those matters placed within their jurisdiction by that Constitution. The term includes each and all of the three departments of Government, and all the officers of each; *i. e.*, the President and all executive officers under him, Congress and all its subordinate officers, and all the United States judges, from the highest to the lowest, and all their subordinates.

So also when we speak of a State Government, we mean the sum or aggregate of all the agencies through which the people of a particular State exercise their political power over those subjects not given over in the United States Constitution to the Federal Government. The term includes the Governor and all his assistants and other executive officers, the State Legislature, and State Judiciary. All of these go to make up the State Government.

Law. Sovereignty, acting either directly or through its governmental agencies, makes Law; that is, it es-

establishes rules by which its governmental agencies and all others subject to its power are to be controlled. A law is an authoritative rule of conduct, proceeding from a power capable of enforcing it, for the control of those who are subject to it. It must proceed from a source having power to enforce it. It must be directed to, or operate upon, those subject to such power. It must be mandatory, requiring obedience; not merely advisory. It must be continuous; that is, must be intended to regulate conduct habitually, either permanently or for a designated time. It must prescribe penalties for disobedience and provide for their enforcement; otherwise those not disposed to obey would disregard it.

RECAPITULATION.

To govern is to regulate, to control. It implies two persons, the one exercising control and the one subject to it. It involves making and announcing rules by the one governing and obedience by the governed. If the latter refuses to obey, then the one governing must enforce obedience, which involves interpreting the rules, applying them to the disobedient person, and inflicting punishment upon him.

Necessity for external control grows out of the nature of man. The power which organizes and maintains civil government is called political power.

Political power undertakes to regulate only that conduct which, if uncontrolled, would be injurious to individuals or to the public.

Unlimited political power is unquestionably sovereignty.

There has never been an example of unlimited political power. It is always limited as to territory, if in no other respect.

In the United States sovereignty is divided, also, as to subject-matter, some political matters being within the jurisdiction of the people of the United States, and others being within the jurisdiction of the people of each of the several States. The political power of each of these governments, State and Federal, over these respective matters, is practically sovereign.

A government is the aggregate of the agencies which a sovereign creates and maintains for the purpose of exercising its political powers and controlling those subject to its jurisdiction.

A law is a rule of conduct established by a sovereign for the purpose of creating and maintaining a government, or of controlling the conduct of those subject to its authority.

QUESTIONS.

I. 1. State the general idea contained in government. 2. Explain in order the steps involved in making and enforcing rules. 3. Apply these principles in some illustration not given in the text.

II. Explain why government is necessary.

III. 1. Define political power. 2. Over what subject-matter does it extend? 3. What is its purpose?

IV. 1. What is meant by sovereignty? 2. How far can political power be limited and still be sovereign? 3. How is sovereignty divided in the United States? 4. What sovereign powers does each State retain?

V. 1. What is meant by the seat of sovereignty? 2. How does it differ in different forms of government? 3. Explain the different organizations which these differences in the seat of government make necessary.

VI. 1. Define a government. 2. Distinguish between sovereignty and a government.

VII. 1. Define a law. 2. By whom is it made, and what elements must it have?

CHAPTER II.

FORMS OF GOVERNMENT.

Differences in Governments. Governments differ principally in the following respects: first, in the seat of sovereignty; second, in the purposes for which they are organized and maintained, and third, in the number and nature of the agencies constituting them. The second and third of these differences depend largely upon the first.

Absolute Monarchies. Those governments in which all political power is vested in and exercised by one person are called Monarchies. In them the will of the one ruler, called a monarch or some other appropriate name, is the supreme law. Theoretically, there is but little need for governmental agencies. This one individual can make, apply and execute the law. If for convenience or other reason he delegates any of his authority to another, such delegation is subject to recall at any time. Neither the person to whom the power is delegated, nor those interested in its exercise, have any vested right in it or its continuance. The delegation of authority will last so long, and only so long, as the sovereign desires. Rights cannot be said to exist under such conditions, except in the sovereign.

Fortunately this absolute form of government is usually short-lived. The limitations of human nature assert themselves even against the so-called absolute sovereign, and he has always been compelled to call in others to assist him in the exercise of his powers. These assistants have uniformly obtained some fairly permanent recognition and status, until they have become parts of the

government itself; and to this extent its nature is changed into the class next to be considered.

Limited or Constitutional Monarchies. Closely resembling the Monarchy proper, or Absolute Monarchy as it is sometimes called, and in many instances growing out of it, is the Limited or Constitutional Monarchy. In this form of government one person is declared to have all sovereign power, but he holds this subject to limitations by virtue of which others share to some extent in the powers and duties of sovereignty. The nature and extent of the power vested in such others differs greatly in different governments. In some cases they are very extensive and important; in others they are of little consequence. In every case the enjoyment and exercise of them constitute limitations on the power of the monarch, and from this arises the name, Limited Monarchy. If the limitations are extensive, and have become permanent parts of the plan of government, it is called a Constitutional Monarchy.

In some instances the encroachments upon the powers of the monarch, and the assumption of the functions of sovereignty by others, are so great and so firmly established that they change the nature of the government so that, while it still retains the name and outward form of a monarchy, it becomes in fact government of another form. This is and for a long time has been the case with the English Government. At one time it was a real monarchy. Later it became a constitutional monarchy, in name and nature. It still bears this name, and has an hereditary sovereign who is said to rule, but in fact the people have long since taken over all the essential powers and functions of sovereignty, and there is perhaps no

republic in the world in which the people have more power than in England.

Aristocracy. When the sovereign power is vested in a small number of some select class or classes, the government is called an Aristocracy. This form used to be more common than it now is. It has resisted the democratic tendencies of the world's progress less successfully than the monarchical form, and there are now few, if any, actual examples of it.

Democracies. When sovereign power is vested in all those governed, or in such a large proportion of them as to thoroughly identify the governing class with all kinds and conditions of those governed, the government is called a Democracy. These are of two classes, Pure Democracies and Representative Democracies.

Pure Democracies. In Pure Democracies all those sharing in the sovereign power act directly in the discharge of governmental functions: that is, they, by direct action, form and express the collective will of those entitled to participate in the government, and directly apply and enforce it. This form of government for any large number of people is manifestly impracticable. The body is too unwieldy and cumbersome to be effective. In very small communities, and as to matters affecting only themselves, it is the ideal plan of self-government.

Representative Democracies. A Representative Democracy is a government in which the governing classes exercise many of their political powers through chosen agents, usually called officers. In communities of large population or area this is the only practical form of democracy. All of the individuals having a share in the political power of the community act directly in organizing a representative government. In this organization

they provide for the exercise of the ordinary powers of sovereignty through designated officers, giving to them respectively such powers as they desire them to have, and placing upon them such limitations as they think best. These several agencies and their organization and operation constitute the Representative Democratic government with which we are now dealing. In America such governments are called Republican, and are created by written instruments known as Constitutions.

Officers. In these Constitutions provision is always made for the election of officers who are to discharge the duties and exercise the powers conferred upon the government. In the great majority of instances the length of time for which these officers shall serve is stated in the law. Upon the expiration of that period the offices must be refilled. In most instances the selection of the successors is made by the voters of the district in which the officers are to serve, so that in this matter also the sovereign people act directly.

Nature of an Officer's Power. After an officer is selected and takes charge of his office he exercises, not his own powers, but the powers of sovereignty. He is an agent for and representative of the people, under whose authority he acts, and all his official action is taken in a representative capacity. Considered as an individual, he has no more authority than any private person, but in his representative or official capacity, within the limits of his authority, he stands for and exercises the powers of the whole sovereign people. This is what is meant by the expression that "a public office is a public trust."

The True Seat of Sovereignty in Democratic Governments. As has been stated, democracies are governments in which sovereign power is vested and distributed among

all or a large proportion of the people. They are spoken of as governments by the people, and in the constitutions creating such governments it is often stated that "All political power is inherent in the people." It is easy to misunderstand these and similar expressions, and conclude that political power inheres in each individual as a matter of personal right. This is not correct. It is "the people" in a collective sense who are sovereign. It is the collective judgment and will which is supreme; not the will of the individual. It is this collective will which determines who shall and who shall not enjoy political privileges, and it is not until the people have granted such a privilege that the one enjoying it can claim it as a right. The highest and most important political right is the right to vote. Even this is not a primary and personal one. It exists only in those upon whom the collective judgment and will of the people have conferred it. In every State there are many persons who are not permitted to vote, even though they be citizens. These excluded classes include minors, and usually all females, and adult males not possessing prescribed qualifications. It is within the power of sovereignty to change these qualifications, either by increasing or lessening them. By the Reconstruction measures, just after the late war, suffrage was extended to the adult males of a race which had previously been disfranchised. By a number of constitutional amendments many of the States of the Union have added to the qualifications for suffrage, so that many persons who once had the right to vote are now deprived of it. In this matter, as in all others in a popular government, it is the will of the majority, lawfully declared, which governs, and the will of the individual must yield to it.

Subdivisions of a State and of Its Powers. In every large community, no matter what its form of government, there is diversity of interest. There are matters which pertain to and directly involve the welfare of the whole people. There are others which are strictly local. They may be of great importance to the small section to which they relate, and yet not affect the public at large. These conditions render necessary another division of power, the people of the whole State retaining power over those matters in which the interests of all are involved, and giving up to the control of the people in the several localities all matters which affect them only. In order to do this effectively it is necessary to form local subdivisions of the State's territory; hence we have counties, parishes, townships, etc.

Unitary States. A Unitary State is one in which all political powers are vested in one person or one group of persons; one in which there is no division of the subject-matter over which civil government extends, the control of all political activities being in the one sovereign.

Example of a Unitary State. Texas, during the existence of the Republic, is the best example of the Unitary State which has ever existed in territory now covered by the United States. Texas, in conjunction with Coahuila, had been a State in the Republic of Mexico. On March 2nd, 1836, Texas separated from Mexico and declared itself, "a free, sovereign and independent Nation." Mexico resisted this. On April 21st, 1836, Texas sustained her claim of Nationality on the battlefield of San Jacinto, and in September following adopted a constitution organizing its permanent government. In this there was no division of political subject-matter. The one people possessed and exercised complete power over all

political matters whatsoever, and the government organized by them was given power to deal with all these matters, both general and domestic. This sovereignty and this government extended to all those matters which go to make up the total or sum of the powers of the people of the United States and of the several States and of both these governments. In these respects, as in many others, the Republic of Texas stands unique in the world's history. The history of the establishment, maintenance, and operation of that Government is exceptionally interesting and instructive.

Confederations. A Confederation, strictly speaking, is not a separate state. It is a voluntary combination of several states, otherwise independent, for purposes expressed in the agreement between them. There is no merging of the several contracting states into a new state, but only a combining of some of their powers and energies for the accomplishment of the purposes mutually agreed upon. It is in the nature of a political partnership between states. Good faith may require that the agreement be kept, but there is no higher power, created by the agreement, having authority to lawfully prevent any of the states from withdrawing.

Example of a Confederation. A very fine example of a Confederation is found in the early effort of the American Colonies to combine for common defense, which in recognition of this fact is called "The Confederation." It could in no proper sense be called a State or Nation. It was a loosely united partnership held together not by any strength inherent in the organization, but by the pressure of common dangers from without. As soon as these external forces were in some measure removed, the process of falling to pieces set in, and continued until

the then almost valueless Confederation was succeeded by the present Government of the United States.

Federal States. On the other hand, in the creation of a Federation or Federal State the combination goes further than a mere agreement for mutual aid and support, and results in a more or less extensive union of the several states, which were before independent, into a new state. It involves a giving over, so to speak, of some portion of the sovereignty of each of the states to the new political unit created by the agreement. The powers and functions which are not so surrendered remain in the several contracting states. This brings about the seeming anomaly of divided sovereignty.

Examples of a Federal State. Possibly the best example of a Federal State which can be cited is the United States. Prior to the adoption of the present Constitution the people of the several States entering into the Union were separate and independent sovereignties. True, the States were members of the "Confederation," but that did not take from them sovereign power.

Whether the United States is simply a Confederation with larger powers than its predecessor, or is in reality a Federal State, was a question of great difficulty and momentous concern to all parties to be affected by it. It may be said that this was the real matter of contention between the North and the South in the late Civil War. The North contended that the people of the several States, in forming the United States Government, had established an indissoluble Federal State; while the South contended that the several States had by compact among themselves formed a Confederation, from which any one or more of the contracting parties could withdraw at pleasure. We may say in passing that the Constitution as written

and the historical facts leading up to and culminating in it, favored the contention of the South, while the "arbitrament of the sword," to which the matter was submitted, favored the contention of the North. The question, so far as involved in a State's right to withdraw from the Union, is definitely settled by the results of the war, and it is now universally conceded that no such right exists. There are still serious differences of opinion as to the rights and powers of the several States within this indissoluble union, but these differences no longer extend along territorial lines, and thus present no occasion for sectional feeling or uneasiness.

Classifications Based on Purposes of Government. So far we have considered the different kinds of government mainly from the point of view of the location of sovereignty. They may also be classified with reference to the purposes to be effected by them. On this basis governments are divided into good and bad. The former include all those which are intelligently designed to promote the general welfare of those who are governed by them, which is the true end of all proper governments. No matter what other characteristics any government may have, if this is not its purpose and result, it is not to be regarded as good. A monarchy might be strong and efficient in promoting the interest of the monarch maintaining it; it might command the fear and consideration of all other powers; but if it were administered for the sole benefit and aggrandizement of the ruler, in no just sense could it be called good. The same is true of a republic. If the people become engrossed in other interests and indifferent to their public duties, and so suffer designing and selfish men to use the government for their personal advantage, instead of for the general welfare, the gov-

ernment, thus prostituted, cannot be called good. It would require a revival of patriotic interest and a thorough cleaning out of the self-seeking officials before it could become good.

Government by the People. It is frequently said that if government is organized and operated in the interest and for the benefit of the people, it is immaterial in whom the right and power of governing may be placed. Or, as it is often expressed, if the government be *for* the people, it is not important that it be *by* the people. There is a certain plausibility in such statements which is well calculated to mislead.

Theoretical Objections. The first objection to the proposition is that there is nothing in the nature and disposition of man to lead us to believe in the practicability of such a scheme. Human nature is too selfish and weak to make it probable that a succession of rulers could be found who would really subordinate their own interests and ambitions to the general good of those governed by them. It might be possible to find one such ruler, but not a continuous line of them.

Objections from Experience. The world's experience has proved the correctness of these apprehensions. There has never been a government, maintained for any length of time, in which the interests of those governed and of the rulers were not identical where the advantages and benefit of the governed were given the preference. It is only in those states in which the people govern that there is identity of the interests of the rulers and of the ruled, and where the motives of self-advantage prompt to good government.

Educational Advantages of Self-Government. If we should concede that government by some other power

would be as disinterested and beneficial from every other point of view, there is still one strong argument in favor of popular government. There is no other method by which the mass of the people can obtain the education and development which necessarily results from interest in public affairs and from active participation in them. If some other form of government were proved to be as good in every other respect, it would lack this paramount advantage.

The several agencies constituting a system of government, their differences, and the distribution of power among them, is dealt with elsewhere.

RECAPITULATION.

The differences in governments relate primarily to (a) the seat of sovereignty, (b) the purposes sought to be accomplished, and (c) the agencies constituting them, and the distribution of power among such agencies.

Governments in which sovereignty is in one person are called monarchies. If the power of the monarch is unlimited, it is an absolute monarchy. If the power of the monarch is limited by fixed rules which are parts of the constitution of the state, the government is called a limited or constitutional monarchy.

Governments in which sovereignty is in more than one person, but yet in a small number of persons, are called aristocracies. These have practically ceased to exist.

Governments in which sovereignty is in all those subject to the government, or in a large proportion of them, and so distributed among different classes subject to the government as to make them fairly representative of the interests of all, are called democracies or republics.

When all the powers of sovereignty in such a government are exercised directly by those among whom sovereignty is distributed, the government is a pure democracy.

When the powers of sovereignty are generally distributed among those to be governed, but a considerable portion of these powers are not exercised directly by those having them, but are delegated to agents or representatives, the government is called a representative democracy, or a republic.

The government of the United States and that of each of the several States is a representative democracy, in which the sovereign power is vested not in all the people, but in a large part of those governed, whose interests are so thoroughly and inseparably connected with the interests of all that the practical result is fair and just representation in the government of all classes and conditions of the inhabitants of the country.

Good governments are those which are designed to promote, and so conducted as actually to promote, the general good of all classes of persons subject to them.

Government by the people is the best and surest guarantee of government for the people, and therefore of good government.

Constant vigilance and patriotic interest and action by all the citizenship of a country are essential to the preservation of good government.

QUESTIONS.

I. In what respects do governments differ from one another? Why is this? Name the different forms of government.

II. What are the characteristics of an absolute monarchy? How does a limited or constitutional monarchy differ from this?

III. What is an aristocracy?

IV. Define a democracy. Explain the difference between a pure and a representative democracy. Define a republican government. A constitution. For what does a constitution provide? Discuss the nature of an officer's power. Where is the sovereign power in a democratic government located? Are the people collectively or individually sovereign?

V. What is the highest and most important political right? What is the nature of this right, and by whom is it given? Explain how and by whom the right of suffrage can be limited, extended, or withdrawn.

VI. Why are local subdivisions of a State's territory necessary? What are these subdivisions called?

VII. What is a unitary state? Show how Texas as a Republic was such a state. What is the nature and purpose of a confederation? Can a State withdraw from it at any time? Give an example of this form of government. What is a federal state? Explain the difference between it and a confederation. Can a federal state exist without divided sovereignty? What government succeeded the "Confederation"? When and by what means was it finally determined that this new government was indissoluble? How can governments be classified beside on the basis of locality of sovereignty? Explain fully why government for the people and by the people is the best possible form of government.

CHAPTER III.

THE DEVELOPMENT OF CONSTITUTIONAL GOVERNMENT.

Necessity for Government. We will make no effort to trace the historical development of governments. Government in some form is made necessary by the nature of man. He is a social being who refuses to live in isolation. Companionship and co-operation are necessities of his being, and these necessitate common adjustment and adaptation of the one to the others. These cannot be

safely left to the determination of each of the several individuals. There must be some authority having control over each for the good of all. This common authority is sovereignty, and the exercise of it is government. Therefore we see that the need for government is in the very nature of man. This necessity has been met in different ways by different groups of people at different places and in different times.

Development of Monarchy. So far as the earliest records can be traced it seems probable that the usual method has been for the head of a family to assume authority over his own household, and thus constitute himself the ruler of that small body. This is known as the Patriarchal form of government. Then different families would combine into larger groups, either by agreement among themselves, or by conquest of one by the other. The larger group thus formed would again combine with another, and a people would grow up subject to the authority of the head of the conquering tribe, or of the one given preference by agreement, who would be the monarch. This is a strongly centralized form of government.

Democratic Tendencies. As intelligence increased and mental and moral forces came to be recognized the natural result was to de-centralize government; that is, to distribute political power among certain classes, or perhaps among the whole people. The dissemination of intelligence was gradual, and far from uniform in the different sections. Hence the corresponding development of democratic ideas and the consequent modifications of the earlier forms of government were irregular and followed by different results.

Growth of the English Constitution. It seems probable

that all the earlier forms of government succeeding the tribal period were growths following and manifesting the ruling traits of the particular peoples among whom they existed. This is true of some of the more modern governments as well. England is a most notable example of this historical fact. There is no date or even period in English history of which we can say, the English government was established at this time. Its growth began before the beginning of recorded history, and its development is still going on.

Present English Constitution. It is customary to say that England has a constitution. Properly understood this is true. But when we use the word constitution with reference to England, we mean an essentially different thing from that which we mean when we use the same term with reference to American institutions. England has no written constitution, while in America the word is never used in a political sense except to indicate a written, fundamental law, by which a government is created and its powers are to be tested.

The English Constitution is the sum of the political principles, precedents and traditions to which the English people are accustomed, and by which they have been governed for generations. It is true that there are a few great state papers, such as the Magna Charta, the Petition of Right, etc., which are frequently referred to as containing or perpetuating the English Constitution, but these, while of great and inestimable value, are declaratory rather than creative. If looked to as a basis of government, they are fragmentary and entirely inadequate. A constitution must be something broader and more complete than any one of these or all of them taken together. So, as stated, in its final analysis the English

Constitution is found in the collective temperament and character of the English people, and in their political traditions, beliefs, and habits.

American Constitutions. In sharp contrast with those constitutions which have grown up with and consist in the character and habits of the people are the written constitutions by which our American governments are created. These are written instruments agreed upon and ordained by the people to be governed by and under them, setting forth in enduring form the plan of government to be instituted and the fundamental principles upon which it is to be administered. They are the direct expressions of the sovereign will, and constitute the supreme law of the people ordaining them.

Written constitutions are an American product. The idea was developed gradually. They were foreshadowed in the "charters" of the original colonies, though they differ materially from these charters. Whatever uncertainty there may be as to the sources from which the idea of a written constitution came, there is no doubt that its existence is a distinguishing characteristic of American political institutions. Its introduction has given a strength and durability to our governments which it would have been impossible to attain by any other means. Without written constitutions our State Governments could not have reached their present efficiency and value, and the United States Government would have been inconceivable and impossible.

Constitution of the United States. The Government of the United States is essentially the creature of the Federal Constitution. It was brought into being by the adoption of that Instrument. Through that it received all its powers and capacities. It has no authority beyond that

given by its provisions. Unless it can find warrant there for any action proposed by it, the act cannot rightfully be performed.

If, however, power is conferred upon the Federal Government, this as a rule takes such power away from the States. This is particularly true as to the legislative and executive powers. There is a much larger sphere of concurrent authority in judicial matters, as will be explained more fully hereafter.

Constitutions of the States. Each State of the Union has a written constitution, which sets forth the plan of government established by the people of that State. In their fundamental conceptions and plans they are the same, though they differ in detail. These State Constitutions cover all political matters not given over exclusively by the Federal Constitution to the United States Government.

As State Constitutions create the State Governments they and the laws made under them are the sole sources of authority to all State officers, and are binding on them in all their official action. Provisions in a State Constitution contrary to the Constitution of the United States are of no legal effect. State statutes, contrary to the Constitution of the United States or to that of the State by whose Legislature they are enacted, are void and cannot be enforced as law.

Matters Usually Contained in Written Constitutions. Written constitutions usually contain:

1. A preamble, setting forth by whom and for what purpose the constitution is ordained.
2. A bill of rights. This is a number of provisions declaring certain rights and privileges to belong to the people, and that they are inalienable and are withdrawn

from and are not to be affected by the grant of authority to the several officers of the government, except as is expressly provided in the constitution itself.

3. Provisions creating the several departments of government, enumerating many of the officers which constitute them and giving general directions regarding them and the exercise of their powers.

4. A number of general provisions on miscellaneous subjects, such as the right of suffrage, taxation, public schools, etc.

5. Provisions as to manner of amending the constitution.

6. Provisions for voting upon the adoption of the constitution; and the statement of the time it shall go into effect if adopted and its effect upon pre-existing laws and rights.

Second Classification of Contents of Written Constitutions. Looked at from another point of view the provisions of a constitution may be classified as:

1. Creative; including all those which provide for the organization of the government contemplated therein.

2. Functional; including all those provisions which determine what each department of the government and the officers pertaining to it shall be authorized to do and the provisions as to how they shall perform these duties.

3. Perpetuative; or those which provide for the continuance and maintenance of the government; and

4. Restrictive; or those which prohibit the government or any of its officers from performing certain acts.

These provisions are frequently intermingled in drafting the constitution, but ordinarily they are readily distinguishable one from the other, and in some connections the classification is useful.

RECAPITULATION.

Government is necessary because of man's nature, and because of his lack of proper judgment as to his own rights and his lack of self-restraint.

Presumably government originated in the family, expanding through groups of families into tribes, and from tribes into nations.

In primitive governments all political power was in the hands of a patriarch. In bringing several families together, this power passed to the ruler of the larger group, usually called a monarch.

As intelligence increased political power was distributed, so the succeeding types of governments were more nearly democratic.

The English Government is an illustration of the gradual growth of democratic ideas, of their adoption into the substance of a government without a corresponding change in its name or form.

The English Constitution is in substance the sum of the political principles, precedents and traditions of the English people. Magna Charta and other English state papers are most valuable as expressing great political principles, but they are too fragmentary to embody a constitution.

An American constitution is a written instrument put in force by the people ordaining it, and which sets forth the plan of government which they establish, and the fundamental principles upon which it is to be maintained and administered.

The Government of the United States is created by the Constitution of the United States, and it has no power or authority except such as is conferred upon it by that instrument, either expressly or by fair implication.

The legislative and executive powers of the Federal Government as a rule are exclusive of similar powers by the State. The judicial powers of the two governments are to a large extent concurrent.

The Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land.

State Governments are created by Constitutions adopted by the people of the respective States. State Constitutions must conform to the Constitution of the United States. If they differ from it in any respect, they are void to the extent of the conflict.

QUESTIONS.

I. Explain the necessity for government.

II. 1. What is the earliest form of government? 2. Trace its development from the patriarchal to the monarchical form. 3. From the monarchical to the democratic.

III. 1. What was the nature of the growth of the English Government? 2. What is meant by the English Constitution? 3. Where is it found? 4. How does it differ in form from the American? What was the origin of written constitutions?

IV. 1. By whom was the Constitution of the United States made? 2. What government did it create? 3. What power and only what power has this government?

V. 1. What is the nature and purpose of a State Constitution? 2. What matters does it cover? 3. What government does it create?

VI. 1. What matters are usually contained in written constitutions? 2. Give two classifications of these.

CHAPTER IV.

NECESSITY FOR DIFFERENT DEPARTMENTS OF GOVERNMENT.

When sovereignty undertakes to establish a government it must make provision for carrying on all the processes of making, communicating, interpreting, applying, and enforcing its laws. In democratic governments this is done by creating designated offices and by conferring upon the officers who fill them authority to represent the sovereign in the discharge of the functions committed to them. Experience has taught that it is well to separate, as far as it is practicable these different powers and duties. Hence, all the Governments in the United States are divided into three departments, called respectively, the Legislative, the Executive, and the Judicial. The Legislative makes the laws, the Executive enforces them, and the Judicial interprets and applies them.

Only the general features of these departments will be given, and the treatment will be confined to our American institutions.

Legislative Department. The Latin word for laws is *leges*. From this word the making of laws is called legislating, the men who make laws, legislators, and the collective body which makes them, a legislature. The legislature of the United States is called Congress. All American legislatures consist of two houses, called respectively the Senate and the House of Representatives, the latter being sometimes known as the Assembly or General Court. United States Senators are elected by the Legislatures of the States which they represent. All other legislators are elected by the votes of the representative districts which they represent. Legislative bodies meet in regu-

lar session at stated times at the capitol of the government of which they are a part. They may be called in special session at other times by the chief executive. The respective Houses meet separately. Each organizes by the selection of proper officers and the appointment of proper committees from its own members.

Legislative Procedure. All laws passed by them must be in writing or print, and must be concurred in by both Houses. A proposed law, when it is brought before the Legislature, is called a Bill. Any member of either House can introduce any bill which he desires, with the exception that all bills for raising money must originate in the House of Representatives. A bill is introduced by a member calling the attention of the presiding officer to the fact that he proposes the bill, and by his taking or sending the bill to the Clerk. The presiding officer then calls the attention of the body to the fact of its introduction, and the bill is read, either at length or by its title. It is then referred to the committee which is to consider it and report upon it. This report may recommend the passage of the bill, either as introduced, or with stated amendments, or it may recommend its defeat. When the report of the committee is made the bill is read at length, and put on the Calendar. It will then come up in its regular order, or under some conditions it may be called up out of its order. When it comes up the third time it is discussed and may be amended. It is then voted on. In some States not only must the bill be called up and read in each House three times, but it must be voted on at each reading, so that in such States a bill to become a law must get a majority vote three times in each House.

Passing a Bill. If a bill receives a majority vote in

the House in which it is introduced it is passed by this House. If it does not receive such vote, it is lost. If it passes that House, it is sent over to the other House where it goes through a similar process. If it is amended in the second House, the bill as amended must be sent back to the House in which it originated for its action on the amendments. If that House concurs in the amendments, the bill is passed. If it does not concur, the bill is defeated, unless each House appoints a conference committee to consider the bill together, and come to some understanding as to the matter and report the bill in some form satisfactory to each House. No bill can become a law until it passes both Houses in exactly the same form.

Signing a Bill. When the bill is passed by both Houses it is signed by the presiding officer of each, and sent to the President or Governor, as the case may be, for his action.

Executive Veto. If the Executive approves the bill it becomes a law. If he disapproves it, he returns it to the Legislature with his objections. This defeats the measure, unless it is passed by each House by a two-thirds vote; in which case it becomes a law without the approval of the Executive.

Legislative Committees. There is very little in American constitutions regarding legislative committees, but nevertheless these are very important factors in legislation. They are appointed by the presiding officer of each House. This gives to such an officer very great powers. He knows what matters are engaging the attention of the public, and he can anticipate with reasonable certainty the nature of the important bills which will be introduced. He also knows the party connections of all the members, and in many instances their personal attitude toward the

important issues likely to arise. He can easily so organize the respective committees before which these measures will come as to have a majority in favor of the side which he wishes to prevail. As no bill can become a law until it has been reported on by a committee, and as a favorable report is very helpful to a bill and an unfavorable one almost fatal to it, the power of selecting the committees is a very great and far-reaching one.

In the case of the Speaker of the House of Representatives in Congress it is perhaps the greatest power regarding legislation possessed by any one man in our Government. The power of the committees is also very great, but this is usually exercised as the presiding officer appointing them and his party desire that it shall be.

Executive Department. The Executive Department consists of the Chief Executive officer, who, in the United States Government is called the President, and in the States, the Governor, and of numerous assistants.

To prevent vacancies in the office of the Chief Executive, a second officer is chosen who will come into the office upon the death, resignation, or removal of the first. In the United States he is called the Vice President, and in the States, the Lieutenant Governor.

It is the duty of the officers of this Department to see that all laws passed by the Legislature are obeyed. This is especially true after laws have been construed and applied by the courts to particular persons. These officers also carry on the business operations of the Government.

In the United States. In the United States Government, the Executive Department is subdivided into nine branches, which are themselves called Departments. The officers in charge of these Departments, respectively, are,

the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney General, the Postmaster General, the Secretary of the Navy, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce and Labor. The general nature of each of these Departments is indicated somewhat by the title of the officer in charge of it. Together these officers constitute the President's Cabinet, and are his general advisers in the various matters pertaining to the Executive Department of the Government.

There are also numerous subordinate executive officers in each of these subdivisions of the Departments.

In the States. In the State Governments the heads of Departments usually consist of a Secretary of State, a Comptroller, an Attorney General, a Treasurer, and others who have charge of important parts of the workings of the State Government. It is not customary to give to them any collective name.

Besides these, there are numerous county officers who belong to this department, such as County Treasurers, County Clerks, Sheriffs, Assessors, and Collectors of Taxes, etc.

Judicial Department. It is the duty of the Judicial Department to decide what is law, interpret legislative enactments, and apply the general rules of law to individual cases; thus to determine the rights and duties of particular persons. The tribunals through which this is done are called Courts.

Judicial System. Every sovereign finds it desirable, if not necessary, to establish a number of different courts, having different powers. All of these courts, and all of the judges and other officers of these courts, constitute the Judicial Department.

Inferior Courts. Many differences over small matters arise in every neighborhood. Their decision does not call for much ability or learning. The chief object is to get them settled quickly and cheaply, so that they will not develop discord. To do this a class of local courts is provided, in which a speedy trial can be had before some one in whom all the parties will likely have confidence. These are usually called Courts of Justices of the Peace.

Higher Trial Courts. Other courts are provided for the trial of cases of more importance. These courts usually sit at the county seats of the counties. There is more trouble, delay and expense involved in trials in them. Both these classes are called Trial Courts, or Courts of Original Jurisdiction.

Appellate Courts. Another class of courts, called Appellate or Revisory, is created to rehear cases which have been tried in the courts of original jurisdiction. These courts usually, if not always, have a number of judges, who are selected with care, and are men of exceptional ability and learning.

Officers Composing Trial Courts. Trial courts consist of a presiding officer, who is called the Judge, and who has general control over the court and its other officers; of a Clerk, who keeps the records, and issues all the written orders of the court; of a Sheriff and his deputies, who enforce the orders of the court; and of persons who are brought in from the properly qualified citizens who reside in the community in which the court is held, and who are made to do service as Jurors.

Parties. The persons who bring law-suits are called Plaintiffs, and those against whom they are brought are called Defendants. The plaintiff always wants the court to give him relief against the defendant, and the defendant resists the granting of such relief.

Procedure in Trial Courts. The procedure in trial courts stated very briefly is this: the plaintiff states to the court the facts which he thinks entitle him to its assistance. The defendant is then brought before the court and states the reasons why the plaintiff ought not to have any relief against him. These statements by the parties of the matters about which they differ are Pleadings. In all courts of importance they are required to be in writing. If in these statements the parties agree as to the facts, but differ as to the law, this difference is decided by the judge. If the parties agree as to the law, but differ as to the facts, this is decided by a jury. If they differ as to both, the judge decides the law points, and the jury the facts. The judge is supposed to know the law, but he does not always do so in fact. The lawyers read the law to him and argue the questions on which the parties differ. The facts are not known to the jury when the trial begins; hence the parties call in witnesses and have them testify as to what they know. They also bring in and have read all papers which they may have that show the facts of the case, so as to inform the jury of the real truth of the matter. This testimony of the witnesses and these papers are called Evidence.

The judge always decides what can be brought before the jury as evidence. He also gives the jury the rules of law to govern them in deciding as to the facts, and by which to determine the legal effect of the facts after they are ascertained. This statement of the law to the jury by the judge is called a Charge. After the jury has decided the facts, they report their conclusions to the judge. This conclusion is called a Verdict. The judge then decides the case by applying the general rules of law to the facts as found by the jury. This decision by

him is called a Judgment or a Decree. It is written by the clerk in the minutes of the court.

Motions for New Trial. If the party against whom the judgment is rendered thinks the case has not been tried according to law, he asks the judge to set the judgment aside, and retry the case.

Procedure in Appellate Courts. If the judge will not grant the new trial, the party can take the case up to an Appellate Court. If he does this, he has the clerk to make out a true copy of the record which has been kept of all that has been done in the trial court, and takes this to the Appellate Court. He there files a brief pointing out the errors in the trial below. The other side may also file his brief. The Appellate Court examines the record and briefs, and if it finds that any substantial mistake has been made in the trial of the case, it either decides it as the trial court should have done, or sends it back to that court for retrial, advising the court how to proceed in it. If it does not find any error, it affirms the judgment.

Effect of a Judgment. When a case has been finally decided, the Judgment settles all the questions of law and fact which were submitted to the court, so far as the plaintiff and defendant are interested in them. That is, a judgment of a court, as between the parties to a suit, settles all the matters in dispute in the case in which the judgment was rendered.

Enforcing a Judgment. If the party against whom the judgment is rendered does not obey it, the party in whose favor the judgment is gets the clerk to issue a written order to the sheriff commanding him to compel the losing party to obey.

Benefits of the Separation of the Departments. The

division of power among the different departments of government is one of the most effective of the "checks and balances of power" in our American institutions. If the same officer or set of officers were authorized to make, interpret, apply and enforce the law, this would be practical tyranny. Officers, by whatever name called, having such powers could oppress those subject to them without any possibility of relief. Fair and reasonable division of power among the several officers who discharge the functions of sovereignty is one of the chief safeguards of the liberty of the people.

Impossibility of Complete Separation. As desirable as this separation of power is, it can never be complete. Some powers are of such nature that, under different circumstances, they must be exercised by officers in each department. There are others whose general exercise is entrusted to one department, but which upon special occasions arising in some other department must be exercised by officers belonging to the latter. In a few cases it is conducive to the general good for officers of different departments to co-operate in the performance of the same act. Though all this is true, still there may be separation of power extending far enough to afford substantial security against official oppression.

Examples of Incomplete Separation. An example of a power which must be exercised by each department is found in passing on the constitutionality of a statute. Every officer in every department is sworn to support the Constitution of the Government which he serves. When a bill is introduced in the Legislature each member must consider its constitutionality, and if he thinks the bill contrary to the Constitution, it is his duty to vote against it. If a majority of the members of each

House vote in favor of any bill, this is a declaration by them that in their opinion it conforms to the Constitution. The act must then be sent to the Governor of the State for his action. If he thinks it is unconstitutional it is his duty to veto it. If he approves the act, this is a declaration by him that he regards it constitutional. After this the act with the Governor's approval is published as law. Later there arises in court a case in which one of the parties claims rights under this statute. The case comes up for trial, and the party relying on the statute presents it to the court as the basis of his claim. The other party contends that the statute is contrary to the Constitution and is consequently void. This is the very question which the Legislature and the Governor have passed upon, but it is the judge's duty to support the Constitution, and to enforce no statute which is contrary to it. He must take the question up for himself and decide upon it before he can determine the legal rights of the parties to the suit. Here officers of each department have passed upon the same question, viz.: is the act consistent with or contrary to the Constitution?

The statement also contains an example of officers of two departments co-operating in the performance of the same act, as both the Legislature and the Governor take part in making the proposed bill a law; the Legislature by passing it, and the Governor by approving it.

RECAPITULATION.

American Governments are divided into three Departments, Legislative, Executive, and Judicial.

The Legislative Department has two branches, called, respectively, the Senate and the House of Representatives.

A bill to become a law must be passed by a majority

vote in each House, and must then be approved by the Chief Executive, or passed over his veto.

The Executive Department of the United States Government consists of the President, his Cabinet, and their subordinates.

The Executive Department of the States consists of a Governor, Lieutenant Governor, Secretary of State, a Comptroller of Public Accounts, a Treasurer, an Attorney General, or similar officers; and of numerous local officers, called by different names in different States.

The tribunals through which the judicial powers of a government are exercised are called courts.

Courts are of several classes. Some have original and some appellate jurisdiction.

All the different classes of courts maintained by a government are its judicial system.

The jurisdiction of a court is its right to hear and decide cases. Within its jurisdiction its decisions are valid. When acting outside of its jurisdiction its decisions are void.

The officers composing courts are judges, clerks, sheriffs, who are sometimes called marshals or constables, and jurors.

The procedure in trial courts includes pleading, citation, impanelling juries, introducing witnesses, argument of counsel, charging the jury, returning verdict by the jury, rendering, entering and enforcing judgments.

A judgment of a court is a final decision settling the rights and duties of the parties to a suit as to the matters about which the suit is brought.

The division of the powers of government is one of the greatest assurances of our institutions and liberties. It is not possible to entirely separate the different depart-

ments and their powers, but this is done in our American governments sufficiently to accomplish the ends designed.

QUESTIONS.

I. 1. What are the three departments of government in democracies? 2. Give the general duties of each.

II. 1. Of what does the legislative department consist? 2. State the manner of procedure in introducing and passing a bill in the Senate or the House of Representatives. 3. What power has the President or Governor over a bill when passed? 4. Discuss legislative committees.

III. 1. Of what officers does the Executive Department consist in the Federal Government? In the State Government?

IV. 1. Of what does the Judicial System consist? 2. Discuss the duties, jurisdiction, and procedure in inferior courts, in higher trial courts, and in appellate courts? 3. What is the effect of a judgment?

V. 1. Why is it necessary to separate these different departments of government? 2. Is this separation complete?

CHAPTER V.

THE IMPORTANT POWERS AND DUTIES OF SOVEREIGNTY AND GOVERNMENT.

As governments are organized to exercise the powers and discharge the duties of sovereignty, we may consider their powers and duties together.

The Duty of Self-Protection and Perpetuation. The most imperative duty of sovereignty is to protect and perpetuate itself. This is so because it precedes all others, and because neglect of it totally incapacitates for the discharge of any other. A dead sovereign cannot exercise any power or discharge any duty.

Dangers of War and Insurrection. The dangers to

which sovereignty and governments are exposed are both external and internal. They may be attacked by other sovereignties from without, as in case of foreign war; or they may be endangered by disturbances within. The external attacks are wars. The internal disturbances, if made by force and contrary to the constitution, are insurrections or rebellions. If a rebellion proves successful, it becomes a revolution.

Military Organization. Sovereignty, in making its plans of government, must anticipate and provide for these attacks. It must devise some methods by which it may oppose and overcome them. This always requires force. Hence every government is given power to raise and maintain armies.

Standing Army. It is usual to support continuously a relatively small number of men, fully organized and equipped, and trained to render military duty on short notice. These constitute the Standing Army, and are used both for immediate defense and as a nucleus around which a larger army can be formed in case of need. The men in the regular army give all their time to military affairs, and being necessarily cut off from all other occupations cease to be productive, and become an expense to the government.

Militia. It is also usual to make provision for a less organized body, called the Militia. This is composed of men who in times of peace pursue the ordinary occupations of life, but who are formed into military companies, regiments, etc. They meet from time to time for drills and other military exercises, and thus secure valuable training in military matters. The purpose of the Militia is to have reserve force reasonably well organized and equipped, which will be ready to respond promptly to

any call that may be made upon it, and which can render at once efficient service. In addition to these two military organizations, all of the able-bodied males, who are subject to a government, are bound to obey its call for assistance, and may be enlisted in its war-forces for such time as may be necessary to protect it from either external or internal foes. . .

Administration of Civil Government. Important as is the military organization which we have just considered, it is not an end or purpose of government, but only a means of effecting an end. The real purposes of government is to protect and secure the just rights and liberties of those governed, and sovereignty maintains its military power in order to enable it to sustain its government in the accomplishment of these ends.

Necessity for Civil Officers. Just rights and liberties can only be secured by making and enforcing just laws, and this, as we have seen, is best done by the organization of the three general departments of government. To be effective, these must be equipped with sufficient number of officers with well defined powers and duties. This necessitates the employment of some method or methods by which to select these officers and put them into office. This selection is always made directly or indirectly by the sovereign power maintaining the government.

Methods of Selection in Monarchies. In case of absolute monarchies, the ruling monarch selects as his successor some relative, usually a son or other next of kin, whom he appoints to receive his power upon his death. The monarch, during his life, fills all other offices as he sees fit. In constitutional monarchies the manner of selecting officers depends on the constitutional rules on that subject. Usually there are three methods: inheri-

tance, appointment by the monarch, and election by the people.

Methods in Aristocracies. In aristocracies the right to succeed to place in the governing body is sometimes hereditary, and sometimes vacancies are filled by selection made by the surviving members of the governing body.

Methods in Democracies. In republican governments there are two methods of selecting officers. One is by vote of the qualified electors; the other is by appointment made by other officers who have already been selected and installed in office. Usually the terms of office are limited to a definite period, but sometimes they continue during the life of the officer. In either case the officer is subject to removal for sufficient cause.

Power to Raise Money Generally. These various operations, whether military or civil, are expensive. To meet these expenses the government must have the power to raise money. The power by which money usually is raised to meet the ordinary expenses of running the government is that of taxation. This will be treated in later paragraphs.

Power to Impress Property. In times of war the government sometimes resorts to the more vigorous measure of taking property which is needed for military use. This is called impressing it. In the great majority of instances in which this power is exercised the property of only one person or a small number is taken, while others having similar property are left undisturbed. The government usually recognizes the inequality of this process, and either restores the property to the owner, after its use is no longer necessary, paying him for any damage to it; or, if this cannot be done, it makes compensation for

its full value. This is only a means of procuring supplies for immediate use in cases of emergency, and the money for reimbursing those whose property is taken must be raised by taxation.

The Power to Tax. The means by which governments ordinarily procure money with which to maintain themselves and carry on their operations is taxation. A tax is a sum of money which the government requires persons or things subject to it to pay into the public treasury for the use of the government. The benefit secured by the tax-payer is the protection afforded to his person and property, or the privilege of doing some act which the government has the right and power to prohibit or regulate, or both of these benefits.

Subjects of Taxation. The power of taxation is very extensive, embracing all persons subject to the government, all kinds of property, all acts and occupations which cannot be performed or engaged in as of common right, and all acts or occupations which are peculiarly within the control of the government imposing the tax. A government can only tax those persons, things, acts or occupations which are subject to its jurisdiction.

Direct and Indirect Taxes. The largest division of taxes is into direct and indirect. Direct taxes are those which are to be paid by those upon whom they are levied without any opportunity for their reimbursement from any other source. Indirect taxes are those which are imposed upon persons with the knowledge of the taxing officers that those paying the tax may reimburse themselves from others, and with the expectation that they will do so. Direct taxes include poll taxes, taxes on land, taxes on incomes, and inheritance taxes. All other taxes, such as occupation taxes, licenses, import

duties, and similar charges, are indirect, since those by whom they are paid always have it in their power to reimburse themselves from some other person who thereafter deals with them concerning the thing or business affected by the tax.

Other Classes of Taxes. Taxes are also divided into numerous other classes. Those imposed on persons are called poll taxes. Those imposed on property in proportion to its value are called *ad valorem*. Those charged for the import or export of goods are called duties, customs, or imposts. The term tariff is frequently used for import taxes. It may be that the word should be limited to the list of goods and the rates of the taxes imposed upon them, but the tax itself is often called by this name. Occupation taxes are charges made for the privilege of following an occupation or business. These are frequently called licenses or excises. Income taxes are those imposed on annual receipts or incomes. Inheritance taxes are those placed upon the passing of property on the death of an owner to his heirs or to those to whom he has given it by will.

Purposes for Which Taxes May be Imposed. Taxes can only be imposed for public purposes. However complete the power of the government may be to raise money for its own protection, operation and support, it has no just authority to take money from one person and give it to another, or to apply it to any private purpose. This would not be taxation, but in effect robbing one person for the benefit of another. What are public and what private purposes it is often difficult to determine; but this only affects the application of the doctrine announced, not its correctness or validity.

Apportionment of Taxes. It is a well established po-

litical principle that taxes should be equal and uniform. That this is both just and desirable all will admit, but no plan has as yet been devised by which it can be fully accomplished. As far as this doctrine can be enforced practically is to so regulate taxation that it will bear uniformly on all persons, things, or acts subject to its operation which are substantially of the same character. It is not required that there shall be uniformity or apparent equality in the taxes imposed upon subjects of different kinds.

Imposition and Apportionment of Taxes are Legislative Powers. What shall be taxed and the amount to be obtained by the tax, and how this shall be distributed among the different subjects of taxation, are matters for the legislative department of the government to determine. If the sovereign desires to limit the power of this department in these respects, it must provide for this in the constitution: otherwise the general grant of legislative power carries with it full discretion as to the subjects of taxation, the amount to be raised, and how it shall be apportioned. The only limitations on the legislative power in such cases would be found in the nature of the taxing power, and the matters over which the sovereign granting the power has jurisdiction.

In imposing taxes the Legislature usually goes no further than to specify the subjects on which the tax is laid and the amount of the tax or the percentage on the value to be paid. The detailed application of these general laws to the particular persons, things, and occupations, etc., to be taxed, is left to other officers. Ordinarily these officers are local, but occasionally the fixing of values of certain kinds of property and estimating

the amount to be paid upon it are entrusted to State boards or commissions.

Assessment of Taxes. The process of applying the general tax laws to particular persons, things, and occupations, and estimating the amount of tax due from each, and properly tabulating or listing these facts, is called assessing taxes. It is a work of importance and frequently of considerable difficulty. The object in requiring taxes to be equal and uniform is that every one shall contribute his just proportion of money to the support of the government. If the Legislature fixes a tax at a certain rate on the value of all property subject to the tax, this will not secure uniformity unless all this property be valued on a uniform basis. It is impossible for the Legislature to know such values, so it requires the officers making assessments to ascertain as nearly as they can the fair value of all property assessed, and to base the assessment on the value thus ascertained.

Boards of Equalization. But, fearing that mistakes may occur in doing this, and that one man's property might be valued higher or lower than similar property belonging to others, it is customary to provide for boards of equalization, whose duty it is to examine all the assessments made in their district or county, compare the different assessments, hear complaints as to them, and then to make such changes as will make the taxes uniform and fair, if any changes are required for that purpose.

Assessment Rolls. The list of property belonging to each taxpayer, its value, and the amount of taxes due on it, is called an assessment; and all these lists in a county or precinct or city, taken together, are called an assessment roll.

Collection of Taxes. The collection of taxes is regu-

lated by general laws. These usually provide that some county officer shall make collections in his county for both the State and the county. After the assessment rolls are completed by the assessor and the board of equalization, they are then placed in the hands of the proper collector. He is charged with the amount of taxes shown to be due by the rolls. He proceeds to collect the taxes as rapidly as possible, and as he makes collections, he pays the money over to the State or county treasurer, taking receipts therefor.

Taxes as Charges on Property Against Which They are Assessed. Taxes are charges on the land on which they are assessed, and if any land taxes are not paid by the owners, the land can be sold by the government for the money to pay them. Taxes on personal property are not charges on such property, but if they are not paid, suit can be brought for them and after a judgment is obtained the property on which the taxes were levied, or other property belonging to the tax-payer, may be taken and sold as in the case of other debts.

Settlement by the Tax Collector. When the tax collector or other officer collects taxes, it is his duty to pay it over to the Comptroller of the State or treasurer of the county or city, as the case may be. When he has collected all that he can, he brings the rolls before the proper officer, usually the county commissioners court, for county taxes, and the State Comptroller for State taxes, shows the amount still uncollected and the reason for his failure to collect it, and then accounts for the balance; that is, he produces receipts from the proper officers for all that has been collected, or pays over the money.

The Comptroller pays the money belonging to the State

over to the State Treasurer, and it can be paid out by the Treasurer only in accordance with the general rules of law.

Appropriation of Public Money. The Legislature also determines for what public purposes the public funds belonging to the State are to be expended, and apportions these funds among these different purposes. This process of providing for the disbursement of public funds is called appropriation. It is a fixed rule of American law that no money can be paid out of the public treasury except in pursuance of an appropriation made by the Legislature.

Local Taxation. The local subdivisions of government are also expensive. Raising revenues for these is regulated by general laws. Usually these laws confer upon the appropriate local officers the power to levy, assess, and collect taxes on the same subjects that are taxed by the State, limiting the amount of such taxes so that they cannot exceed a specified proportion of the State taxes.

Assessment and collections for county purposes are usually made in the same manner, by the same officers, and at the same time, as for the State. Therefore what has been said on that subject will in the main apply here.

Other Sources of Revenue. Taxation is the regular and usual method of raising money for governmental purposes, but the State sometimes has other resources. All public lands belong to the sovereign. In some parts of the United States the States acquired lands before they came into the Union. In such cases the title to these lands remained in the respective States, unless they were ceded to the United States. In other sections of

the country the territory was acquired by the United States before the States were organized. In these cases the title to the lands remains in the United States. The income from these lands and the proceeds from their sale belong to the government owning the lands.

Borrowing Money. Governments may borrow money, but this is only a temporary expedient, which must ultimately be paid for by taxation, and hence, however beneficial and important it may be, is not to be regarded as a real source of income.

Eminent Domain. Another power of sovereignty, which it exercises through its governmental agencies, is that of eminent domain. This is the power to take property which belongs to private persons, and apply it to public use. It differs from taxation in that it acts upon particular property and takes the whole of the thing needed from the owner, while in taxation an assessment of a small proportion of its value payable in money is made against the owners of all the property liable to the tax. If a person owns property worth \$1,000 which the public needs, it may be taken under the power of eminent domain. The whole loss falls on the owner, and the public has thus been enriched, not at the cost of all, but of a single individual. This is manifestly unjust. The owner must be reimbursed by paying him from the public funds the fair value of the property taken. If the government needs \$1,000 in money and desires to procure it by taxation, it levies a small tax on all the property within its jurisdiction. Each owner pays only his pro rata share. This bears uniformly on all. There is no need to reimburse any one of those who have paid the tax, nor could this be done, for the money to pay to them would have to be collected from them, so it would be but going around a circle.

The power of eminent domain may therefore be defined as the power in the government to take private property and apply it to public use upon payment to the owner of its fair value.

This value is determined by disinterested persons selected for that purpose. This power is very important. It enables the government to supply itself with the means of discharging its duties to the public at just and reasonable cost, and relieves it from the necessity of paying exorbitant charges. Under this power sites to build court houses, public school houses, and other buildings needed by the public, are acquired; rights of way for railroads and telegraph lines are obtained, and property necessary for other public utilities is secured.

Police Power. Perhaps the most important of the named powers of government is that under which it makes laws for the protection and preservation of "the health, safety, and morals of the people." It is under this power that most governmental action is taken. It covers all legislation designed and reasonably calculated to protect the public health, secure the public safety, or guard the public morals. There is no way to catalogue and describe all the different kinds of conduct which may endanger one or the other of these, and hence there is no way to enumerate the different laws which may be or become desirable in protecting against such conduct. Hence it is not practicable to define this power more definitely than is done at the beginning of this section.

The state cannot part with its police power, nor bind itself by agreement not to exercise it. The safety, health, and morals of the people are too important to admit of this. Government being organized mainly to protect these rights of the people, it would defeat its own pur-

poses if it were permitted to bind itself by agreement or otherwise not to do so.

General Powers. Beside these powers which have been thus separately dealt with, there are the general legislative, judicial, and executive functions, which are exercised in the ordinary operation of government. These have been already dealt with to sufficient extent for this part of our study.

RECAPITULATION.

The first duty of sovereignty and of government is to protect itself so as to enable it to meet its other duties.

Military organizations are necessary to protect governments. They consist of standing armies and of militia.

The true purpose of government is to secure the just rights and liberties of those governed.

There can be no liberty without just laws. Laws can only be made and enforced in democratic governments through officers.

The usual method of selecting officers in democracies is by direct vote of the people.

Government must have power to raise money.

A tax is a sum of money which the government requires those subject to it to pay into the public treasury for the use of the government.

All things, persons, and occupations subject to a government may be taxed by it.

Direct taxes are those which are paid by the person against whom they are assessed without opportunity to reimburse himself.

Indirect taxes are those for which the person paying them can reimburse himself from others.

Poll taxes are taxes imposed on persons as such.

Ad valorem taxes are those imposed on property according to its value.

Imposts or customs or tariffs are charges made by the government for permitting goods or commodities from other countries to be brought into this country.

Excise or license taxes are charges for pursuing certain occupations, or doing certain business acts.

Taxes can only be imposed for public purposes.

Taxes should be equal and uniform. This cannot be done absolutely, but laws levying taxes should attempt it.

Imposing and apportioning taxes are a legislative function. A State Legislature can exercise its own discretion in taxation, unless restricted by the Constitution of the United States or by that of the State.

Assessing taxes is ascertaining what persons and property are subject to taxation, and estimating the amount due by each person.

Persons collecting taxes or handling public money in other ways are held to strict account.

Public lands and the income from them, and the proceeds of their sale, belong to the government.

The power of eminent domain is the power to apply private property to a public use upon paying the owner its fair value.

The police power is the power to protect the health, safety or morals of the people.

QUESTIONS.

I. 1. What is the first duty of sovereignty, and what power is necessary to discharge this? 2. Explain the military organization of a government.

II. 1. What is the real purpose of government? 2. How only can this be accomplished? 3. How are officers selected in

monarchies and aristocracies? 4. Explain the two methods of selecting officers in democracies.

III. 1. Why is the power to raise money so necessary? 2. What is meant by "impressment"? 3. Define a tax. 4. What are the subjects of taxation, or over what does a government's right to taxation extend? 5. How are taxes classified? 6. Distinguish between direct and indirect taxes. 7. What are poll taxes, ad valorem taxes, duties, customs, excises, occupation taxes, income taxes, inheritance taxes? 8. Explain the term "tariff." 9. For what purposes may taxes be imposed? 10. How should they be apportioned? 11. What department of government exercises this power of taxation? 12. Explain the process of assessment and collection. 13. What is an "appropriation," by whom, and for what purpose is it made? 14. Explain the need and method of local taxation?

IV. 1. What other means has a government for raising money, except by taxation? 2. What are public lands? 3. How may a government borrow money? 4. Explain the right of eminent domain. 5. Why is the police power of a government so important? 6. What other general powers has a government?

CHAPTER VI.

RELATION OF THE INDIVIDUAL TO SOVEREIGNTY AND GOVERNMENT.

We have already considered this subject briefly in some aspects, but it is desirable to treat it more in detail. It is apparent from what has already been said that the relation of the individual to sovereignty is not the same in all kinds of states and forms of government. It will only be necessary, however, to deal with this relation in two of these: monarchies and democracies. The first we will barely touch upon, but to the second we will give more attention.

Definitions. Before taking up these separate treat-

ments, it may be well to explain some terms which will be needed in both.

A Subject. A person who is governed by a monarch is called a subject. This term is used whether the monarchy is absolute or constitutional, though it is clear that the actual political rights which such a person has, and the duties which he owes, may differ largely under the two forms.

A Citizen. A person who is a constituent member of a democracy is called a citizen.

Allegiance. The sum of the duties which a subject or citizen owes to his government is called allegiance.

Protection. A government owes to its subjects or citizens the duty of protection.

An Alien. An alien is one who is not a subject or citizen of the government to which his relations are being considered; that is, one who is not a citizen of the United States is an alien as to it; or one who is not a subject of Great Britain is an alien as to it.

In Unitary States. As a person cannot be a subject or citizen of more than one unitary state at the same time, it is manifest that the subjects or citizens of one government must be aliens as to all other unitary governments.

In Federal States. In a federal state there is dual citizenship; that is, citizenship of the federal state and at the same time of one of the states forming the federation.

An Inhabitant. An inhabitant is one who lives within the territorial limits of a government, whether he be a subject, a citizen, or an alien.

Residence and Domicile. A person's residence is where he is then actually making his home. His domicile is

his permanent home. His residence and domicile may be, and usually are, the same, but this is not necessarily so. For example, a man has his permanent home in Austin, Texas, but he goes to Mexico on business, and lives there for a year. During that year his residence is in Mexico, but his domicile, that is, his permanent home, from which he is gone only temporarily, and to which he intends to return, is in Austin.

Citizenship and alienage are not matters of locality, but of relationship to government. A citizen of the United States may reside abroad, and an alien to that government may reside within its territory. His political status is not changed by either fact.

In Monarchies. In absolute monarchies the subject is in a condition of almost complete subjugation. He has no political rights. His personal and property claims have no permanent recognition, and may be denied at any time by the government without redress to the subject. These claims are too precarious to constitute legal rights.

In constitutional monarchies conditions are different. In some instances their subjects have as well defined and thoroughly protected rights of person and property, and their political rights are as extensive and well safe-guarded as in a democracy. In such cases, the terms "monarchy" and "subject" are simply inheritances, and the rights and duties of a subject are substantially the same and have the same recognition in law as those of a citizen. Hence the treatment of one to a large extent will be applicable to the other.

Citizenship. The United States Supreme Court has given several definitions of a citizen. In one case it is said that he "is one of the sovereign people;" in another,

that he is "a constituent member of the state." Each of these definitions embraces the idea of participation in sovereignty, a sharing in political power. It may be said that such participation to some extent is necessary to citizenship, but it is settled beyond controversy that full participation is not. It is everywhere conceded that minors and women may be citizens, yet women vote in very few of the States of the Union, and minors in none. It is therefore apparent that we must not adopt the idea that sharing in all the powers of sovereignty is essential to citizenship.

We reach the same conclusion if we approach the subject from the opposite point of view. Under the naturalization laws of the United States it takes several years to change an alien into a citizen. He must declare his intention in the manner prescribed by law, and then must wait at least two years before he can prove his good intentions toward the Government and become a citizen. In many of the States he is allowed to vote as soon as he "makes his declaration of intention," so it not infrequently occurs that a person who is in process of becoming a citizen, but who is in law still an alien, may vote. Voting is the highest form of exercising sovereign power, hence we see that under these conditions one may exercise political power of the highest kind before becoming a citizen. As, therefore, one may be a citizen without voting, or may vote without being a citizen, it cannot be that citizenship and a right to full participation in political power are the same.

Perhaps we cannot define a citizen more accurately than to say that he is one who owes full allegiance to a republic, and who is entitled to the full protection of its laws and power.

The Right to Vote is Derivative. The doctrine has already been presented to you that sovereign power in a republic is vested in the people collectively, and not in each person individually; but it is so easy to become confused on this point, and the confusion actually existing in the minds of many is so great, that I again call the fact to your attention. No person has a right to vote in a republic simply because he has a desire to do so. Only those "members of the state," to use the language of the Supreme Court, upon whom the people in their collective capacity have conferred the privilege, are lawfully entitled to vote. The qualifications which entitle to vote are subject to change, as the people see fit. They can lessen the requirements so as to entitle persons to vote who have not theretofore had the privilege, or they can increase the qualifications so as to exclude persons previously entitled to such a right. This selection of those who may or may not vote is a matter of great importance. It is an exercise of sovereign power of so great consequence that the people reserve it to themselves, and do not delegate it to any of their officers. Hence we find that qualifications for voting are fixed in the Constitutions of the several States, and cannot be changed by legislative action, but only by amending the Constitutions.

Allegiance. The principal duties which a citizen owes to a republic are to fight in its defense, contribute to its support, obey its laws, render to it faithful and intelligent service, love its institutions, and do all within his power to promote its interests and welfare. The obligation to perform these duties is allegiance. The manner in which the citizens perform these duties determines the good or bad character of a government.

Protection by the Government. In return for allegiance the government owes to the citizen the duty of protection in all his just rights and liberties. This duty to protect the citizen exists not only when he is within the territory of the government, but also while he is abroad. The extent and nature of the protection differs in the two cases, but the duty exists in each.

While at Home. While the citizen is at home his government must protect him from injury by any foreign foe, and must either prevent or furnish reasonable means for obtaining redress for any injury inflicted on him by the violation of his legal rights by others.

The Sovereign Determines what shall be regarded as legal rights entitled to protection, and what redress shall be allowed for their violation, and the manner of obtaining it. Governments are organized principally for this purpose, and they fail in their design if they do not accomplish it to a fair extent.

The first thing to be determined in affording such protection is what claims made by individuals are entitled to it. Some of the demands might be proper, and some very improper. If the government were to undertake to protect all of these, this would result in not protecting any. For whenever one person made a claim it could be met by an opposing claim, and if the government were required to allow both it could enforce neither. Therefore some authority must judge between these opposing claims and decide which is entitled to protection. If every person were to decide upon the justice and validity of his own claims against every one else, there would be endless confusion, amounting to anarchy. The determination must be made by the sovereign, and only those claims which it recognizes as just and proper are to be upheld and protected. A claim or an advantage

asserted by an individual which is recognized and protected by the sovereign is a legal right.

In order to afford protection to legal rights, governments must make authoritative and continuous rules by which all persons are to be governed in their daily lives and business operations, and which its officers must apply in settling controversies which may come before them. These rules are laws. They are made by the legislative department. Applying the laws thus made to the claims of individuals and deciding which are protected and which are not is the exercise of judicial power, and is done by the judicial department. After the case is tried and decided, it is the duty of the executive officers to see that the decision of the court is carried out.

While Abroad. While the citizen is abroad his government still cares for him. It does not have direct control over the governmental agencies maintained by other sovereigns within their own territory, and so can neither make laws for his security, nor directly enforce the rules which do exist there for his protection. Still, it exerts its authority to see that he is not interfered with in his life, liberty, or property, contrary to those generally accepted customs and rules which are known as international law. These rules all civilized nations are presumed to recognize and conform to, and if they are violated by one government or its citizens to the injury of a citizen of another, the government of the injured person presents the grievance to the other government for adjustment. Ordinarily it is settled amicably, but if it is not, and the injury is serious and is clearly established, the government of the one injured may declare war against the other and thus force redress.

How Citizenship is Acquired. When a republic is organized all persons within its territory are presumed

to take part in it, and to become citizens. This may be shown to be untrue as to any particular person, or those organizing the government may exclude by special action certain persons or classes of persons from the benefits of citizenship. Children of citizens are citizens by reason of that fact, no matter whether born within the territory of the government or abroad. A child of an alien born within the territory of a republic is also a citizen unless at the time of the birth the parent is a representative of a foreign government. A citizen of one of the United States may become a citizen of any other of the States, simply by changing his domicile to the latter. An alien may become a citizen by naturalization; that is, by becoming a resident of the United States, declaring his intention to become a citizen in the manner provided for by law, remaining in the United States a designated time, and in open court renouncing allegiance to his former sovereign and taking the oath of allegiance to the United States.

All persons who have not acquired citizenship in one or the other of these ways are aliens.

Citizenship and Allegiance in Confederations and Federal States. So far, what we have said has not taken into account the difficulties which arise in connection with citizenship in confederations and federal states. When a number of unitary states combine into a confederation, questions as to citizenship and allegiance can scarcely be said to arise. The confederation being but a combination or partnership of states, not resulting in the creation of a new state, there can be no relations between the citizens of the contracting states and the confederation.

When, however, the combination results in the creation of a new federal state, very difficult questions are

involved. These questions are closely related to those which we have considered in connection with sovereignty and its division. When one sovereign has jurisdiction over a person and is justly entitled to his obedience as to certain matters, and another has jurisdiction over him and is justly entitled to his obedience as to other matters, he may well be in doubt as to where his allegiance is due. This exact question does not appear to have been decided. There are, however, numerous authorities on the question presented from the other side; that is, of what government is such a person a citizen. The Constitution of the United States and acts of Congress thereunder, the several State Constitutions and statutes thereunder, the Supreme Court of the United States and of the several States, all recognize and declare that such a person is a citizen of each of the governments. That is, dealing with the matter in a concrete case the same person is at the same time a citizen of the United States and of the State of his domicile. As a citizen of the United States he owes support, obedience, service and love to it, and it owes protection to him so far as it has control over him and his affairs. As a citizen of his State he owes support, obedience, service and love to it, and it owes protection to him so far as it has control over him and his affairs. As the States are proved by the war to be joined in an indissoluble Union, theoretically there can come up no controversy between the State and the Union, and the question presented by secession, as to which government the citizen owed allegiance, cannot arise. If it ever does arise practically, it will probably be settled by appeal to arms.

RECAPITULATION.

In absolute monarchies the subjects do not have legal rights. In constitutional monarchies they do.

Citizenship entitles to full protection from the government.

Partial participation in political power is essential to citizenship, but full participation is not.

In a republic the people collectively determine who shall vote.

A citizen may be denied the right to vote, while one who is not a citizen may be given that privilege.

Allegiance is the sum of the duties which a citizen owes his sovereign.

The sovereign protects its citizens while at home by defining and securing their rights by law.

The sovereign determines what claims and privileges shall be protected by law.

A legal right is a claim or privilege which is recognized and protected by law.

Rules made by sovereignty to be observed by those subject to it, and the violation of which is punished, are laws.

A government protects its citizens while abroad in those rights which are recognized by international law.

A person may acquire citizenship in any one of three ways, (1) by being an inhabitant of a country when a republic is formed, (2) by birth within the jurisdiction of a republic, or (3) by naturalization.

There can be no citizenship in a confederacy. In a federal state there is dual citizenship, first, in one of the states uniting in the federation, and second, in the federation.

A person sustaining this double relation owes alle-

giance to each sovereign as to the matters over which it has jurisdiction.

As federations are created by written agreements, there should never be any occasion for the individual to choose between the two sovereigns.

If a conflict should arise between the two sovereigns, the individual should support the one which is acting in accord with the federal agreement.

QUESTIONS.

I. 1. Define a subject; a citizen; an alien. 2. What is allegiance, and what does a government owe in return for it? 3. Define an inhabitant. 4. Distinguish between residence and domicile. 5. Upon what does citizenship or alienage depend?

II. 1. Why cannot a subject of an absolute monarchy have legal rights? 2. Why does a subject of a constitutional monarchy have such rights?

III. 1. What is the Supreme Court's conception of citizenship? 2. Discuss fully the question as to whether or not citizenship and a right to participate in political power are the same. 3. What is meant by saying that political power is inherent in the people collectively? 4. In a republic from whom is the right to vote derived, and by whom may it be exercised?

IV. 1. What are the principal duties which a citizen owes to a republic? 2. By what is the good or bad character of a government determined? 3. Over what rights and claims does a government's duty to protect its citizens extend? 4. How are just claims for protection determined? 5. By what means does a government protect its citizens at home? 6. Define a legal right; a law. 7. What is the process used in protection of legal rights? 8. In what way and to what extent is a citizen protected while abroad?

V. 1. In what three ways may citizenship be acquired? 2. What is meant by birth within the jurisdiction of a government? 3. Explain the process of naturalization. 4. Why is there no citizenship in a confederation? 5. Explain the dual citizenship in a federal state, and the extent of allegiance owed to each sovereign. 6. What tends to prevent contending claims from arising between these two sovereign powers? 7. In case of conflict, which power is it the duty of the citizen to uphold?

CHAPTER VII.

POLITICAL PARTIES.

Necessary in Republics. In a republican government under a written constitution political parties are necessary. In such a government it is public opinion which controls, and this opinion must express itself according to constitutional methods. One of the principal advantages of a written constitution is to protect the minority against sudden and impulsive changes of opinion on the part of the majority. Under constitutional government, no matter how large a majority entertains an opinion, the minority is not bound to obey it until it has been made law. The processes by which this is accomplished are slow, and persistent co-operation by those favoring a policy is necessary before they can make it into law. This persistent co-operation is party action; and to make it effective, close and continuing party organization is necessary.

Constitutional Issues. In a government which depends for all its powers on a single written instrument, questions of governmental authority will continuously arise. These can be determined only by construing the constitution.

National Issues. Such issues regarding the Constitution of the United States arose in its preparation, became more sharp during the discussion as to its adoption, and have remained the most important and most bitterly contested of all the controversies known in our history.

State Issues. Besides the questions as to the Federal Constitution and the policies of the Federal Government, the people of the respective States are also confronted with questions of local concern. Many of these neces-

sarily go back to and involve the construction of the Federal Constitution. Always in such issues, and frequently even in those purely local, general principles and policies of government are involved.

Necessity for Party Organization. Persons holding similar views as to the nature and functions of government naturally are drawn together in their efforts to make those views effective. This is the origin of political parties. As there is very close connection between the powers of the Federal and of the State governments, it is impossible to form intelligent political opinions which do not include the functions and policies of both. As a rule those who agree as to National powers and policies also agree as to State powers and policies; and, as they are substantially in accord regarding all the principal issues before the people, they form a political party in which they act in both National and State matters. Mere agreement among those of similar opinions accomplishes nothing. These opinions must be converted into laws. Laws are enacted by the majority in Congress or in the State Legislature as the matters to which they relate are National or State in their nature. Congressmen and State legislators are elected by the people. Hence political parties need votes, and most of their organized effort is to procure these.

Votes Should Express Preferences for Men as Representatives of Political Opinions and Measures. A number of men holding the same opinions and hence in the same party may desire the same office. If all of these are permitted to be candidates in the election in which officers are chosen, they will divide the vote of their party, and the opposition by concentrating its votes on one candidate will be successful. To prevent this it is necessary for the party to select one of its members to represent

it as a candidate for each office. The person thus selected is a nominee, and all members of the party are expected to support and vote for him. As the nominee is selected from the party nominating him, he can be relied upon to support the measures advocated by that party. That there may be no misunderstanding as to what these measures are, the beliefs and purposes of the party are formulated by its constituents into written instruments, adopted by them. These are political platforms.

Membership in Political Parties. Membership in a political party is voluntary. Each individual determines for himself whether he will affiliate with any party; and, if so, with which. This selection should represent the honest judgment of the individual as to the general welfare of the country. When one does unite with a party he is expected to aid it in all proper methods in the advancement of its policies, and in the selection and election of its nominees.

Plan of Party Organization. Party organization when complete extends from the voting precinct through all the intermediate political subdivisions of the government up to the Nation. The plan includes one or more official representatives of the party for every voting precinct in which the party has members, and similar representatives for every county, for every political district in each State in which officers, whether State or National, are to be elected, for each State and for the United States. These party representatives are known as the executive committees of their respective territories. They have charge of the interests of the party and its nominees within these. They call party conventions and primary elections, provide speakers, superintend the publication and distribution of party literature; in short, are the

active representatives of and campaign managers for their party within the territory allotted to each committee. Most of their time and energy is given to putting the party machinery into operation for the purpose of making nominations and adopting platforms, and in securing votes for the nominees after their selection.

Methods of Influencing Voters. There are many methods by which votes may be controlled: some are highly commendable, and their reasonable use is a patriotic duty; some are questionable, some objectionable, and others outrageous. Among the proper methods are dissemination of correct information regarding public matters; fair and tolerant discussions of the facts and law involved in any policy, and of the results which may be reasonably anticipated as following its adoption; and appeals to the patriotism of the voters so as to increase their zeal.

Among the questionable methods are affording conveyances to voters in which to attend the polls; inducing the uninformed and ignorant to take part in elections; and all similar proceedings.

Among the objectionable methods are appeals to prejudice, coloring facts, suppressing the truth regarding matters at issue, expressing opinions not really entertained, treating, and in short any and all influences which do not appeal to the honest judgment of the voters, and which are not based on the truth.

Among the outrageous methods are the use of money for corrupting the voters, whether the bribe be direct or indirect; as, for example, the offer of business or political advantage or support, or any personal benefit to the voter; the use of force or coercion of any kind, as by physical harm or by the threat of it, or by financial in-

jury or the threat of that; and all other methods of similar nature.

Proper Use of Party Organization. The proper use of party organization is to encourage and make effective all proper methods of influencing voters; to discourage the use of questionable methods, and to prevent the use of objectionable and outrageous methods by the members of all parties. Every political party should be as anxious to prevent and as active in correcting abuses by its own members as those by members of opposing organizations. This is one of the opportunities which those who are now children have to improve the political methods of their fathers.

Methods of Making Nominations. There are two general methods of party action in making nominations. One is by convention, and the other by primary election. Under the former, nominations are made by conventions of delegates; under the latter, with a few exceptions in unusual cases, they are made by direct vote of the qualified members of the party. Under the convention system, each succeeding convention eliminates the minority in it, so that nominations are really made by the majority of the nominating convention. This usually represents the will of the majority of the voters in the party, but such result is by no means certain.

In the primary election the votes of all the members of the party within the territory within which the nominee is to be elected are brought together and estimated, and each has its proportional effect in determining the nomination.

The convention system gives better opportunity to the political boss and trickster; the primary election is better protection to the individual voter and the honest candidate.

The Convention System. Under this system the proper party officers designate times and places when and where the various conventions are to be held, and prescribe the qualifications which entitle a person to vote. These are that he be a qualified voter under the law of the State, and usually that he supported the nominees of the party in the last general election. Sometimes this last is omitted and is substituted by a promise to support the nominees put forward by the party in the pending campaign. Occasionally both are required.

Precinct Conventions. The first of these series of conventions are known as precinct conventions, and are held by the voters themselves. Each such convention is called by the precinct executive committee of the party to meet at a convenient place in its voting precinct, and all the voters in that precinct having the required qualifications are entitled to participate. The voters, or such of them as desire, meet at the appointed time and place and organize themselves into a convention, and proceed as a collective body. They are supposed to be governed by general parliamentary rules, but in fact are usually a law unto themselves, adopting such methods as those in the ascendency prefer. The principal business of these conventions is to select delegates to represent the precinct in the next convention in the series, usually a county convention, and to elect precinct committeemen for the party. This last is to keep up the party organization.

These delegates and officers are chosen by a majority vote, and consequently they are almost always taken from the faction having control of the convention. Thus, if A and B were opposing candidates for nomination to a county office, and A had one more supporter in the convention than B, the entire ticket of delegates to the county convention put forth in favor of A would be selected,

and B, by lacking one vote, would lose all benefit of the votes which had been cast for him and would get no support from that precinct in the county convention.

The delegates selected and sent to the county convention are the representatives of the majority of those voting in the precinct convention, and this majority may instruct them what to do in the county convention. If instructions are given to the delegates, good faith and party loyalty require that they obey them; but there is no legal penalty for failure to do so. If the delegates are not instructed, or only partially instructed, they are free to use their own judgment, in the first instance on all points, in the second, on all not covered by their instructions.

County Conventions. All conventions in the series after those held in the precincts are composed of delegates. The first delegate convention is the county convention. This is composed of the delegates from the different precinct conventions held in the county. As the delegates are representatives of their respective precincts, they collectively are entitled to the number of votes which the precinct they represent should have; that is, the delegates do not vote in their individual right, but together cast the vote to which the precinct they represent is entitled. This is to give representation to members of the party throughout the county in proportion to the party strength in the different precincts. The vote to which each precinct is entitled in the convention is ascertained by dividing the number of voters belonging to the party within that precinct by the number of votes which entitles to one representative vote as determined by the proper party officers. Usually the manner in which the vote of the delegation shall be cast in the

county convention is determined by a majority vote of the whole delegation. Sometimes the number of votes to which the precinct is entitled is divided by the number of delegates present, and each delegate is permitted to cast his share of the vote.

The county convention is called to order by the proper party official, and organizes by the selection of the officers customary to deliberative bodies.

Its business is to nominate county officers, to select delegates from the county to all the other conventions in which that county is entitled to participate, to elect the party officials for the county for the next term, and to give expression to the party opinion on local matters.

Other Delegate Conventions. Under this system a convention must be held in every district in which a party nomination is to be made. These are most frequently districts for representatives or senators in the State Legislature, for judicial officers of various kinds, for State officers, for representatives in Congress, and for Presidential electors.

The county is the unit of representation in all these different conventions, and sends delegations to each. The general order of procedure is the same in these conventions as in the county conventions as just described, and need not be taken up further than to say that in a National convention for nominating a President of the United States, the State is the unit, and delegates to that convention are selected by State conventions called for that purpose, and cast the vote of the State therein.

The several conventions take such action regarding platforms as they desire, though platform declarations made by conventions less than those of State or of the United States are not usually regarded as of much consequence.

Primary Elections. The other method of selecting party candidates is by primary election. Under this plan every legal voter in the party is given an opportunity to vote for a candidate for each office to be filled at the next general election. These votes are counted, the result declared, and a record made of it. This record is called a return, and is sent to the proper representative of the party and is kept by him till a designated time, when all the returns are counted together and the number of votes received by each candidate for nomination is ascertained. It is customary to declare the candidate receiving the highest vote the party nominee.

Conventions Under the Primary Election Method. It is usual on the day of the primary election to hold a precinct convention for the purpose of selecting delegates to a county convention, who are to be present and supervise the counting of the vote cast at the primary election in that county. The county conventions select delegates to other conventions, as under the convention system explained above. These higher conventions meet at the times and places designated, count the votes for the candidates for nominations in their respective districts, and declare the results. Their functions in this respect are rather those of canvassing boards than of old-style nominating conventions. They adopt platforms, select permanent party officers and committees for their district, and thereby keep up the party organization.

Vote Necessary to Nomination. There are three rules as to the vote necessary to nominate a candidate. Each political party is free to adopt any one of them. One requires that to entitle a candidate to the nomination he need receive only a plurality vote; that is, a vote larger than that received by any opposing candidate. If there are three or more candidates for the same office,

this rule often results in the nomination of a person who has received less than half of the whole vote cast.

Another rule requires a majority vote to nominate. Under this, no one can be a nominee until he has gotten over one-half of the total vote cast in the convention.

The other rule requires a two-thirds vote to nominate, and no one can be the nominee until he has received at least that per cent. of the vote cast.

Regulation of Party Action by Law. Until quite recently political parties had been left to select their own methods of procedure, so long as these did not violate the general rules of law; but within the last few years a number of the States have passed laws especially regulating these. Such laws require primary elections, and provide even the details for holding them. The methods prescribed are expensive and troublesome, but afford much less opportunity for fraud and imposition than the old systems.

The regulation of party activities and nominations by law marks a new era in American politics, and gives to the individual voter much better security in his political rights.

Usually there are two great parties in every government. In many States the voters are about equally divided between them, but in others the majority one way or the other is overwhelming. In either case there is very little probability of any one being elected to office who is not a nominee of one or the other of the leading parties. Hence all or nearly all officers in the United States have been party nominees. This shows the importance of legal regulation of party politics.

Present Political Parties. The leading parties now in existence in the United States are the Republican and

the Democratic. The Republican believes in a strong Federal Government with centralized powers and gives to the United States Constitution the broadest construction in favor of the General Government. The Democratic party believes in the retention of power by the States and gives such reasonable construction to the Constitution as favors the States. These are the issues which have divided the parties which have been prominent at every stage of our history, and will likely remain the chief sources of controversy so long as the Government shall stand.

RECAPITULATION.

Co-operation among voters holding the same political views is essential in republics.

Issues as to the construction and application of the Federal and State Constitutions are the most frequent and important political questions before the American people.

Concerted action among those holding similar political views for the purpose of inducing others to vote with them results in the formation of political parties.

The ways of influencing voters may be classed as proper, questionable, objectionable and outrageous.

The proper use of party organization is to encourage proper political methods, discourage questionable ones, and prevent all others. This should be done by every one, both within and without his party.

Everyone should affiliate with some political party. The choice should be made thoughtfully and patriotically.

Parties make themselves effective by nominating candidates for the different offices, State and Federal, and by adopting and promulgating political platforms.

There are two methods of making party nominations: by convention, and by primary election.

In the convention system the voters of a precinct meet in a collective body and select delegates by a majority vote. The minority in the precinct is without any representation in the county or in the higher conventions.

All conventions after the precinct conventions are composed of delegates, each delegation being entitled to such number of votes as the precinct or district which it represents is allowed. Each delegation usually votes as a unit, and thus shuts out the minority view in the delegation.

In the convention system there is great opportunity for fraud and injustice.

In the primary election system each voter in the party votes directly for those whom he wishes nominated, and all these votes are counted in determining who shall be the nominee. Thus, each vote cast in each precinct is carried forward into the final result, and each voter has equal voice in the nomination of candidates.

A plurality vote is the largest vote cast for any one candidate for a particular office.

A majority vote is a vote of more than one-half of all the votes cast.

A two-thirds vote is a vote of two-thirds or more of all the votes cast.

As a general rule a political party determines what vote shall be necessary to a nomination. In some States this is regulated by statute.

In a number of States the proceedings by which political parties shall make nominations are regulated by law. These statutes all require primary elections. This regulation is proving salutary.

QUESTIONS.

I. 1. Why are political parties necessary in a Republic? 2. Upon what do the most important issues between them depend? 3. What causes concerted action, and how is it obtained?

II. 1. Discuss the chief purpose of political parties; and the proper, questionable, objectionable, and outrageous methods of influencing voters.

III. 1. How and for what are political parties organized? 2. What is the duty of each member? 3. Explain the convention system of party action. 4. The primary election method. 5. Contrast the effects of each.

IV. 1. Define a plurality vote; a majority vote; a two-thirds vote. 2. How far are methods of voting regulated by law?

THOUGHT QUESTIONS FOR REVIEW.

1. What different processes are involved in the exercise of control by one person over another?

2. What is political power and why is the subject-matter to which it applies limited?

3. What is the usual doctrine as to the amount of political power necessary to constitute sovereignty? What material difficulties are there in the acceptance of this doctrine in the United States?

4. Why is political organization necessary in States where the sovereignty is distributed among the people?

5. What are the advantages of a representative democratic form of government?

6. What are the advantages of having a written constitution in such a government?

7. What is meant by the expression, "all political power is inherent in the people"? What would be the result in governments if it were held that people here meant each individual separately?

8. Why is it necessary to have political subdivisions within each State?

9. How do unitary and federal states differ? Why can there be no citizenship in a "confederation"? Could there be a federal state if there were no such thing as sovereignty limited as to subject-matter?

10. By what means can representative democratic governments be made to serve and advance the interests of the people? Whose business is it to look after these things?

11. What advantage has government for and by the people over government for the people?

12. What is really meant by the English Constitution? How does this differ from the American idea of constitution?

13. Why is it that the Congress of the United States can lawfully do nothing unless authorized to do so by the Federal Constitution, while a State Legislature can do anything which it is not forbidden to do either by the Federal or State Constitution?

14. Why do the people insert bills of rights in their constitutions?

15. What are the creative, what the functional and what the perpetuative parts of a constitution?

16. What are the arguments in favor and what against the division of governments into three departments?

17. Why is the legislative branch of government divided into two houses? Why is it required that all bills for raising revenue shall originate in the House of Representatives?

18. What are the powers and duties of the Judicial Department? Why are courts said to be agents of the sovereign? Why does each sovereign provide a number of different kinds of courts?

19. What constitutes the military organization of a government? Is the maintenance of such organization an end and purpose of the government? If not, why is it maintained?

20. What are the relations between sovereignty, government, law and liberty?

21. Why is it essential that a government shall have the power to tax? Why cannot a government tax things over which it has no jurisdiction?

22. What are the objections to collecting taxes for private purposes? Why should taxes be equal and uniform?

23. Why is the power of eminent domain recognized as a sovereign power? Why is the State required to repay the owner for property taken under the power of eminent domain, when it is not required to repay taxes?

24. Can a people prosper unless they are protected in health, safety and morals? How is the police power used to protect them?

25. What is the difference between residence and domicile? Why must every one always have a domicile?

26. What is meant by a citizen being "one of the sovereign people"? Prove that citizenship and the right to vote are not the same.

27. What is the relation between citizenship and allegiance?

28. How does defining and protecting legal rights result in establishing liberty?

29. Why are political parties necessary in a republic? In a republic formed on a constitution, why do political parties usually separate on constitutional questions?

30. What are the advantages and disadvantages respectively in the convention and primary election methods of selecting party nominees? Why have a number of States passed laws regulating the manner of making party nominations?

PART TWO.

EARLY GOVERNMENT IN AMERICA.

CHAPTER VIII.

GOVERNMENT IN THE COLONIES AND UNDER THE CONFEDERATION.

Early settlements. Each of the original thirteen States began life as a colony. In all but one or two the original settlers were English, and in the few where this was not true the British soon succeeded in asserting and maintaining their supremacy. So for all practical purposes we may deal with them all as of British origin.

There were three forms of government under which these settlements were made, the colonial, the proprietary, and the provincial. In the colonial form a charter was granted to a colonization company. In the proprietary, the charter was granted to a proprietor, and in the provincial the King and Parliament seemingly retained larger powers. Gradually the people under each of these forms of government came into the exercise of substantially the same political privileges and rights. For some time before the Revolution every colony had a legislative assembly elected by the people, which enacted all local laws within the colony. These assemblies exercised large control over the revenues and supplies which the local government received, and so kept a strong leverage in forcing the enactment of laws acceptable to the people.

There was not so great similarity in the Executive and Judicial Departments. Two of the colonies selected their

own Governors. In others they were appointed directly by the King and in others by the proprietors of the colony. These differences as to selection extended to the Governor's Council. These Councils were at once the advisory cabinet of the Governor and the higher house of the Legislature. The judges of the important courts were chosen by different methods in different colonies, and the right of appeal to the courts of England was more extensive in some than in others.

Relations with England. In all these forms of government England claimed and very frequently exercised general control, legislative, executive and judicial, over the colonies. The rightful limits of this control was the insistent cause of uninterrupted and increasing dispute and controversy. It was natural for England to insist upon her ultimate sovereignty on all questions, including the right to tax and to control commerce. It was equally natural for the colonies at first to recognize and, in the course of time, to resent these claims. When the settlements were first made they were practically dependent on the Mother Country for the means by which to sustain life. It was many years before any one of them could reasonably meet the demands of its own people for even the absolute necessities. While this condition lasted serious opposition to the claims of England could not arise. Dependence on the Mother Country for food and commerce was not all that tended to keep the settlers loyal. They had fierce and mighty foes to contend against. The Indians were generally unfriendly, and the influence of the Dutch and French did not make them less so, and at times there were actual hostilities with the French themselves. This fear of disaster for a long while held the colonies to England and its people

and institutions, without seemingly exerting any influence in bringing the colonies themselves into closer relations. As each was unable to aid itself, it could not offer much assistance to the others. Besides, there were differences of religion, temperament and prejudices which forbade much active sympathy among them. Physical conditions also tended to keep them apart. The settlements were separated by many miles. The sea was dangerous to such craft as the colonist could command, and travel by land was equally as perilous. There were no roads, no ferries or bridges, few conveyances and horses, so that a journey from Jamestown to Boston in the early colonial days was incomparably more uncomfortable and dangerous, and in many instances longer, than a trip from the United States to Europe is now. So for a long time the various colonies were not only distinct politically, but were far apart socially and commercially.

Influences Tending to Separation From England. Each of the colonies in its isolation was contending against the same difficulties and overcoming the same foes. Each having entered upon its life with the same sturdy, liberty-loving people, was gradually growing into strength and hardiness, and also into an appreciation of its own potentiality.

In the course of time the settlements enlarged and became more nearly self-sustaining. This enlargement also brought them somewhat closer together. Trade began to spring up among them, and the development of the trade of each with England, and so far as it was permitted with other countries, and the limitations and taxes imposed upon such trade, awakened them to the fact that they had common interests. They also began to

succor each other to some extent against the Indians. During the struggle between England and France the troops from the several colonies were brought together in common hardships and dangers in fighting a common foe. This gave better opportunity for acquaintance, and also taught them how much there was of identity in their respective conditions. England continued her management of her colonies from her own point of view, rather than from theirs, and after a while the colonies began, as it were, to make common cause against her.

Separation not Contemplated in First Disagreement.

In the early stages of the political dissensions the necessity for separation from England was not recognized, and many efforts at adjustment, without renouncing allegiance to her, were made. In 1765, "a Convention of the English Colonies" was held at New York, representatives from nine colonies being present, and on October 19th it adopted a resolution frequently called "The First Declaration of Rights."

This paper is a dignified protest by subjects to their lawful King. It expressly declares their present loyalty and their purpose to maintain it.

First Continental Congress. Early in 1774 the British Government passed the Boston Port Bill. A copy of this bill reached Boston early in May, and at once the committees of correspondence in that section met and sent an address to the similar committees throughout the provinces, asking co-operation in suspending trade with Great Britain. This address made prominent the question whether the colonies would consider the wrong against Boston as a wrong against all, and would make a common cause against England. British soldiers soon took possession of Boston. The Legislature of Virginia

was then in session, and on May 24th the House of Burgesses set aside June 1st as a day of "fasting, humiliation, and prayer." On May 26 the Governor dissolved the House for this action. The next day the members of the House, no longer acting in official capacity, met in a tavern and recommended an annual congress of all the colonies "to deliberate on those general measures which the mutual interests of America may from time to time require." This was the beginning of the "Continental Congresses."

Each colony acted in this matter as it saw fit. Ten of them selected delegates. These met in Philadelphia September 5, 1774. This was not a congress in the sense we are accustomed to use that word. It was not a meeting together of representatives of different sections of the same government for legislative purposes, but an assemblage of delegates from independent governments, whose sole functions were to deliberate concerning matters of common interest and to recommend policies to their respective colonies. Each colony had one vote.

September 28, 1774, this Congress voted down by a majority of one a "Plan for a Proposed Union between Great Britain and the Colonies." This was a proposition to Great Britain of a plan of governmental co-operation between her and the colonies. The Congress finally passed two highly important measures. One a Declaration of Rights and Union, and the other providing for an "Association" for the purpose of suspending trade with Great Britain. As this Congress had no authority to bind any one, its action, particularly the recommendation as to "Association," was taken up by the legislatures of the colonies, and within a short time it was ratified by eleven.

Second Continental Congress. The Second Continental Congress assembled in Philadelphia May 10th, 1775. Like its predecessor, it began as an advisory body merely, but the pressure of the conditions then existing was too great, and without any well defined authority so to do it took on some of the functions of a governmental body. On June 14th, 1775, it determined to raise an army, and on the next day General Washington was selected as its Commander. He took command in Cambridge, Mass., on July 2nd, 1775. Hostilities had been in progress for some time in a more or less desultory way. This action of the second Continental Congress may be regarded as the authoritative recognition by the colonies of America that a war was pending.

Before this, however, four of the settlements had changed their form of government from that of dependent colonies to temporarily independent organizations. It is true, these contemplated revival of fealty and allegiance to Great Britain, upon a just recognition of colonial rights. In May, 1776, Congress advised the Assemblies of all the colonies to make such changes in their governments as should be most conducive "to the happiness and safety of their constituents in particular and America in general." All but three of the colonies took this recommended action before July 4, 1776.

Declaration of Independence. This Declaration was made July 4, 1776. The delegates making it represented colonies whose political status was such as has just been given. In the instrument they are called both States and Colonies. The language in part is as follows:

"We therefore, the Representatives of the United States of America, in general Congress, Assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions do, in the name, and by the Au-

thority of the good people of the Colonies solemnly publish and declare, that these United Colonies are and of Right ought to be Free and Independent States; that they are absolved from all allegiance to the British Crown and that all political connection between them and the State of Great Britain is and ought to be dissolved; and that as Free and Independent States they have full power to levy War, conclude Peace, contract Alliances, establish Commerce, and do all other Acts and Things which Independent states may of right do."

Draft of Articles of Constitution. The same day that the committee was appointed to draft "The Declaration of Independence," another was chosen to prepare a basis for a confederation among the States thus declared to be free. The report of this last committee was not adopted by Congress till November 15th, 1776. The plan for the confederation required its adoption by all of the States. This was not done till 1781.

The Confederation. The result of this action by the States was to bring into legal being the Confederation known as the "United States of America."

The second and third paragraphs of the Articles of Confederation are: "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not in this Confederation expressly delegated to the United States, in Congress assembled."

"The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever."

These two paragraphs give a good idea of the nature

of the combination. It was a friendly league between independent States by which they entrusted to a Congress in which each had an equal voice such powers as seemed to them necessary to secure to them defence against common enemies. A careful study of the instrument confirms this.

There was no executive department and no regular judiciary. Congress was to settle disputes between States by a method set out in the Articles, but there was no way to enforce the conclusions arrived at. It could also create courts with some admiralty jurisdiction. The only private rights which could be dealt with at all were disputes over land claimed under grants from the different States, and these were not to be submitted to regular courts, but to a special tribunal organized by Congress in a manner prescribed.

Each State had one vote, and each sustained its own delegates.

The article granting powers to Congress is as follows:

ARTICLE IX. "The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into *treaties* and *alliances*, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of *marque* and *reprisal*, in times of peace, *appointing courts* for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts."

These are the governmental powers conferred upon the Confederation.

"A Committee of the States," composed of one delegate from each State, was to represent Congress during the vacation of that body.

The States were forbidden to exercise some of the functions of sovereignty relating to general matters, but there were some qualifications or exceptions to the denial in many instances.

The scheme was too weak to result in a real government. Although under the pressure of the common dangers incident to war, the Revolution was prosecuted by it to successful issue, and England was forced to relinquish all claim on the States composing it.

RECAPITULATION.

The original settlers in the colonies which were subsequently changed into the thirteen original States were English emigrants.

These colonies in the beginning were weak and dependent on England. They gradually increased in strength and self-sufficiency.

Some of the colonies were organized under colonization companies, some under proprietary grants, and some under direct supervision of the King and Parliament.

These different forms differed principally as to their Executive Departments. The Legislative Department in each included an Assembly elected by the people, in which all bills for raising local revenue were required to originate.

England retained general control over all the colonies, and insisted on exercising her powers for her own advantage, instead of the good of the colonies.

The colonies resented this, and as they became more

conscious of their power, became more and more disinclined to submit, and finally joined in a number of protests to the King and Parliament, asking redress, but not contemplating separation.

In 1774 the First Continental Congress met in Philadelphia. This was a meeting of delegates from distinct sovereignties, not representatives from different districts in a single nation.

The Second Continental Congress met May 10, 1775. It made provision for an army with which to meet the invasion then being made by the British.

This Congress also adopted the Declaration of Independence and appointed the committee which drafted and reported the Articles of Confederation.

Before the action named above was taken the colonies had changed their governments into independent States, and the Declaration of July 4, 1776, was not a prophesy, but the assertion of an existing fact.

The Articles of Confederation were adopted by Congress on November 15, 1776, and were then submitted to the States, and were ratified by the last one on March 1st, 1781.

The Confederation was not a federal state with the powers pertaining to such a government, but was a friendly league among independent sovereigns, in which each had equal voice, and whose recommendations none of them were bound to obey.

Under this Confederation the States successfully carried on the Revolutionary war and compelled England to recognize their independence.

QUESTIONS.

I. 1. What three forms of government existed in the early English settlements of America? 2. Were any of these independ-

ent of England? 3. What did all these forms have in common as to legislation? 4. What difference was there between them as to selection of the Chief Executive.

II. 1. What influence tended to keep the Colonies loyal to England? 2. What influences tended to separate them from England? 3. What influences tended to keep the Colonies apart? 4. What to bring them together?

III. 1. What was the attitude of the colonies toward England when the Convention of 1765 was held? 2. When was the Boston Port Bill passed by Parliament? What was its effect on the Colonies? 3. What action did the Virginia House of Burgesses take regarding it?

IV. 1. When and where did the First Continental Congress meet? What was its nature? 2. What were the two most important measures passed by it?

V. 1. When and where did the Second Continental Congress meet? 2. What did it do regarding an Army? 3. What was the political condition of the Colonies when this Congress met? 4. What advice did it give to them as to their governments?

VI. 1. By whom was the Declaration of Independence made? 2. Whom did it declare to be free and independent?

VII. 1. By whom were the Articles of Confederation prepared? 2. What was necessary to establish "The Confederation" under these articles? 3. What was the nature of this "Confederation"? 4. Enumerate its principal powers.

CHAPTER IX.

THE PREPARATION AND ADOPTION OF THE CONSTITUTION OF THE UNITED STATES.

Necessity for Changes in the General Government.
After the close of the Revolutionary War and the withdrawal of all immediate outside pressure the weakness of the Confederation became painfully apparent. It was clear that the several States must either become more closely and effectively united or all attempt or pretence

of general co-operation among them would cease. Thoughtful men everywhere recognized that to have any permanent advantage from a common government it was necessary for the several States really to delegate to that government some share of their sovereign power, and give to it authority somewhat proportioned to the responsibilities to be met by it. To this all agreed, but as to the extent to which such surrender need go and in what way it should be accomplished there were great differences of opinion.

Attempts to Strengthen the Confederation. The Continental Congress several times attempted to remedy the existing evils, at least partially, by proposing amendments to the Articles of Confederation, but it never succeeded in getting the unanimous vote of all the States, which those Articles made necessary.

Beginning of the Constitution. About the same time several of the States had appointed Commissions to meet with similar representatives from other States in an effort to adjust certain commercial difficulties. In one of these meetings the representatives from Virginia suggested that delegates be appointed by all the States, to meet together and consider their trade relations. This was acted on favorably by the Commissioners present, and a request to that effect was sent to the several States. This meeting was to be held in Annapolis. Commissioners from only five States met. These passed a resolution recommending a convention from all the States "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union." Copies of this resolution were sent to the Legislatures of the respective States and to Congress. A number of the States

acted favorably without waiting to see what Congress would do. Congress a little later recommended calling a convention to meet at Philadelphia on May 14, 1787. In a short while all the States which had not previously acted, except Rhode Island, appointed delegates to represent them in this Convention.

Convention Forming the Constitution. There was delay in the arrival of some of the delegates, but on May 25th, 1787, the Convention organized with George Washington as President. Before the adjournment of this body each State in the Confederation, except Rhode Island, was represented. The Convention sat behind closed doors until September 17, 1787, when the work of preparing the Constitution was completed, and the Convention adjourned.

In the resolution recommending the calling of the Convention Congress had stated that its sole purpose would be to "revise the Articles of Confederation," and that all the amendments proposed should become effective when agreed to in Congress and confirmed by the States. The Convention evidently considered itself as acting under the authority of the States rather than that of Congress, so it disregarded this resolution, first, in forming an entirely new Constitution, and second, in failing to require any concurrence by Congress before the Constitution should become operative. This last is shown by the concluding article of the Constitution in these words: "The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." The Convention did not attempt to give to the Constitution any operative force by its own action nor to require any action by Congress before it became effective. It was

simply a proposition to the several States to enter into the new government, contemplated and provided for therein, and a declaration that it would become operative among the first nine States which should accept it, through proper conventions. If as many as nine States should not ratify it, it was to be without effect. If nine should ratify, as to them it was to constitute the basis of their new Union, which of necessity would supersede the Confederation. The result as to the other of the thirteen States under these circumstances would be that they might either adhere to the old scheme of Confederation or return to their original situation of entire independence.

Notwithstanding the failure of the Convention to report its work to Congress for its action, that body did take it up and on September 28th, 1787, approved of it, and recommended its ratification by the States.

Ratification of the Constitution; Organization of the Government Under It. Within less than a year nine of the States ratified the Constitution. Congress then passed an act providing for the organization of the new Government. Electors to select a President were to be chosen in January, 1789, and the President was to be elected in February. The first Wednesday in March was set as the time for "commencing the proceedings under the Constitution." Washington was elected President. There was, however, delay in getting a quorum in the houses of Congress, and the inauguration ceremonies were deferred until April 30th. The Supreme Court of the United States has decided that the Constitution went into effect March 4th, 1789.

Effect on Non-Ratifying States. After Congress had taken action for the organization of the Government and

before its actual organization, two other States ratified the Constitution, so that the Union began with eleven of the States as members. The two not then included were North Carolina and Rhode Island. Each of these subsequently ratified, North Carolina doing so on November 21, 1789, and Rhode Island on May 29th, 1790. Just what the relations between each of these States and the new Government were during the interval between the creation of the latter and the coming in of the States respectively never came up for definite decision. Congress dealt with them, so far as it acted toward them at all, as foreign States. For example: in July, 1789, Congress passed a law imposing a duty on foreign ships, and later it passed an act suspending the former act as to North Carolina and Rhode Island until January 15, 1790. Before that date North Carolina ratified the Constitution and so came into the Union. Rhode Island was still considering the matter, and another act was passed by Congress extending the time as to her until April 1st. Thus it is apparent that Congress regarded both North Carolina and Rhode Island as foreign when the first *suspension* of the tax was made as to their respective vessels, and that North Carolina by ratifying the Constitution during the first suspension had become a part of the Union, but that Rhode Island by failing to ratify retained its status as a foreign State. Still, as it was then taking steps to come into the Union, the courtesy of further suspension was accorded her. Notwithstanding the Government of the United States had been already established on March 4th, 1789, when North Carolina and Rhode Island subsequently ratified the Constitution they came into the Union on the same basis as that of the other eleven States. So that from and after

May 29th, 1790, all the thirteen original States were constituent members of the United States of America.

RECAPITULATION.

After the recognition of their independence by England the Confederation proved too weak to hold the States together.

The Congress suggested many amendments, none of which received the votes requisite to adoption.

Several Commissions from a number of States met at different times, each surpassing its predecessor in numbers and importance.

Finally the Annapolis Convention recommended to Congress and to the Legislatures of the several States that a convention be called to meet at Philadelphia May 14th, 1787, to take such action as might be deemed necessary. Congress endorsed the call. All the States except Rhode Island sent delegates. Some of these were elected before the action by Congress, and some afterward.

Congress suggested that the work of the Convention be a revision of the Articles of Confederation, and also made the concurrence of Congress necessary to the validity of the actions of the Convention.

When the Convention met it prepared an entirely new Constitution and submitted it directly to the several States, providing that it should be effective among those ratifying when ratified by nine.

When nine States had ratified, Congress passed resolutions providing for the organization of the Government under the Constitution, to be operative on the first Wednesday in March, 1789.

At that time only eleven of the States had ratified the Constitution, North Carolina and Rhode Island not hav-

ing done so. Subsequently these came in. In the meantime they were separate and independent States, having no political connection with each other, or with the other States, or with the United States.

QUESTIONS.

I. 1. What method of strengthening the Confederation was attempted first? 2. What practical difficulty prevented the success of this plan?

II. 1. In what way was the Convention which prepared the Constitution of the United States called? 2. What was its original purpose? 3. When and where did it meet? 4. What States were represented in it? 5. When did it adjourn?

III. 1. Did the Convention revise the Articles of Confederation, or propose a new Constitution? 2. What was necessary to give practical validity to the Constitution? 3. When did it go into effect? 4. What States ratified the Constitution before that time? What two had failed to ratify?

THOUGHT QUESTIONS FOR REVIEW.

1. Why was it impossible for the Colonies to begin their existence as independent States?

2. Why was it natural that as time advanced the Colonies and England should separate?

3. What was the purpose of the Convention which was suggested by the Virginia House of Burgesses, in connection with the Boston Port Bill? Did this recommendation contemplate the formation of a new government among the Colonies?

4. How did the First Continental Congress differ from a regular legislative body?

5. What is meant by the statements in the Declaration of Independence, "That these United Colonies are and of right ought to be free and independent States"?

6. What is the real meaning of Articles II and III of the Articles of Confederation?

7. How did the Confederation differ from a federal state?

8. Why did the weakness of the Confederation become more apparent after the Revolutionary war than during it?

9. What part did the States and the Continental Congress respectively take in calling the Convention which prepared the Constitution of the United States?

10. In what respects did this convention in its action depart from suggestions made by Congress in recommending the holding of the Convention?

11. What do these departures show as to the Convention's idea as to the source of its authority.

12. After the Constitution had been ratified by eleven States and had become operative as to them, what was the relation of North Carolina and Rhode Island to "the United States"?

PART THREE.

THE UNITED STATES OF AMERICA.

CHAPTER X.

GENERAL NATURE OF THE UNITED STATES GOVERNMENT AND ITS RELATIONS TO THE STATES COMPOSING IT.

Introductory. We have traced very briefly the causes leading up to and resulting in the formation of the Government of the United States, and the manner in which the Government was created. We have seen that it was preceded by the thirteen original States, existing first as Colonies of Great Britain, and later as independent States; and that these independent States, by compact among themselves, entered into a Confederation for their mutual protection and advantage. Through this Confederation they waged successfully the War of the Revolution, and compelled England and the world to acknowledge their independence. We have further seen that this Confederation was too inherently weak to hold together after the pressure of war was withdrawn, and that the several States were confronted by the alternative of forming a stronger union, or of losing all advantage of co-operation among themselves. They chose the former, and the United States was the result.

The United States Constitution and its Construction. This Government was created by the States by means of a written Constitution, in which its plan and purposes are set forth, and which the framers expected all to understand and accept with a common meaning. This

expectation had in it the fallacy of ignoring the human frailties of the framers and the interpreters of the instrument. There has never been a time since it was written when there were not honest differences of opinion regarding its meaning.

Those who believe in a strong centralized Government can find arguments supporting their views in some portions of the instrument. While others, equally honest and patriotic, who believe in the sovereignty of the States, and in strict limitation of the powers of the General Government, are equally successful in referring to other portions of the instrument which support them. The issue may be briefly stated thus: Is the United States a Confederation from which any of the States can withdraw for just cause, or is it an indissoluble Federal State? So long as the argument was confined to the historical development leading up to the Government and its establishment, and to the language of the instrument and its contemporaneous construction, the advocates of the rights of the States had decided advantage.

Result of the War on Construction of the Constitution. But later there came a time in our history when this question was left to the "arbitrament of the sword," and the result of battle was against the States' right of secession and in favor of a centralized Government. It is too late to re-open the question, and all are alike agreed that since the surrender of General Lee at Appomatox no State has a right to secede from the Union. So, whatever may have been the nature of the Government at its inception, it is now Federal; and no State can take back from it any portion of the sovereignty once ceded to it.

Sovereignty Divided Between the People of the States and of the United States. This does not mean that in creating the Federal Government the States gave up all

of their sovereignty. It is only an example of the division of subject-matter, political activity, and authority between two sovereigns. Before the adoption of the Constitution each of the separate thirteen States was a unitary state, having jurisdiction over all political matters. Some of these powers had by agreement been delegated to the Confederation to be exercised by it as a common agent for the good of all, but these powers were still those of the several States. So much as had been received from each State was subject to be recalled by it at any time. By the United States Constitution, as it has ultimately been construed, this condition is changed. In creating the United States of America under that instrument, the several States and their people did not give over only temporarily the powers conferred upon that Government, but actually separated these powers from the mass of those retained by them, and transferred them to the Federal Government, in such manner that they passed irrevocably from the State to that Government. Each State reserved to itself all the powers not given over by it in the Federal Constitution to the United States. This is a division of sovereign power. As to those matters given to the Federal Government the people of the whole Union became sovereign. As to the matters not so given over the people of each of the several States remained sovereign.

The Constitution the Basis of Separation. The line of separation between the powers of the two sovereigns is drawn in the Constitution. In the main it is not difficult to trace. Thus, as to most of the matters within the jurisdiction of each Government, there is no controversy. In some instances, however, there is difficulty in determining which Government has control over a given matter.

The Constitution Construed by the Supreme Court.

The Constitution is authoritatively construed by the Supreme Court of the United States. When that tribunal has passed upon it, all of the officers of the United States and of the several States, and the people of each, are bound to obey its decision. It may be said that this gives to the United States the advantage in such controversies. This is more theoretical than practical. An examination of cases adjudged by that Court will show quite as many and as important decisions favorable to the States as to the Federal Government. But even if there were more force in this objection, it could not reasonably be maintained. If there is to be a Constitutional Union at all, some officer or officers must have the final authority to construe and apply the Constitution. Unless this power is concentrated in one tribunal there could be no uniformity of construction and consequently no uniformity of rule under the Constitution. The only tribunal to which this power can be entrusted is the Supreme Court of the United States, composed of men from different States, and whose decisions are binding throughout the whole Union.

Relations Between the State and Federal Governments.

We may summarize the relations between the two Governments thus: the thirteen original States preceded the creation of the United States. At that time they had ceased to be colonies, and were complete unitary states. The United States was formed by the ratification by each of these several States of the Constitution. In entering into this Union each surrendered so much of its sovereignty as related to those matters given over to the Federal Government, but retained all power not thus given up. As to the powers delegated by the States to the United States the latter is sovereign, but as to all mat-

ters not so given up the States retain their original sovereignty. What part of the sovereignty of the States is surrendered and what part is retained can only be determined by the construing of the Constitution of the United States. The Supreme Court of the United States has the authority to construe that instrument, and to bind all persons by its decisions. These general doctrines must be kept in mind in our study of our American institutions, or we cannot properly understand them.

Territorial Possessions and Their Governments. Article IV, Section III, Clause 2: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

A number of the colonies had received grants from the English Government of territory which extended indefinitely inland from the Atlantic seaboard. We are not interested in the boundaries of the several claims, or with the controversies which arose out of them, further than to note the fact that the grants covered vast areas of unused territory extending toward and in some instances reaching the Mississippi River, and that there was irreconcilable conflict concerning them. No State had strength within itself to maintain its title against the hostility of the Indians, or the claims of European nations. The result was that eventually this vast area of uninhabited land came into the possession and under the control of the United States, by mutual understanding between that Government and the respective States interested in it. In addition to this in course of time the United States gained larger territory from France, Spain and Mexico. Thus this Government became possessed of a vast domain of public lands over which its jurisdiction extended, and in which there were no States.

This territory rapidly filled with settlers from the older States. The policy adopted by the Federal Government toward this territory and its inhabitants is substantially the same in all of the different acquisitions, though the details in each case are different.

Territorial Governments. The general policy is to organize temporary governments within designated boundaries. This is done through Congressional action in the following way: Congress, by statute, designates the boundaries of the Territory, gives it a name, and provides for the people within it to organize a government in accordance with the act of Congress. This act is called an Enabling Act, and the government created under it has only such powers as it confers. The usual plan is to provide for the three governmental departments, consisting of a Legislature, chosen by the people of the Territory; of a Governor and other executive officers, the higher of whom are appointed by the President of the United States, and the lower selected by the people; and of a Judicial Department, the higher judges being appointed by the President, and the lower elected.

Territorial Enabling Acts and State Constitutions. In general it may be said that the Enabling Act of Congress is a substitute for a Territorial constitution, in that it is the basis on which the Territorial governments are founded, and at once the source of and limitation upon all official authority within them. In other respects these enabling acts differ very widely from State Constitutions. They are not permanent, and are not adopted by the people, but come from Congress.

A Territory has no Senators in the United States Congress, but it has one Representative, elected by the people of the Territory, who is entitled to a seat in the House of Representatives at Washington, and to join in discus-

sion of matters affecting the Territory, but who has no vote.

The Territorial governments established as just outlined exist until Congress sees fit to withdraw the authority from them, or until they are superseded by the formation of State Governments.

New States. Article IV, Section III, Paragraph 1. "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress."

All of this after-acquired territory was settled largely by people from the older States, who were citizens of the United States, and who were eager for the full measure of political power and activity that was enjoyed by the citizens of the several States from which they had emigrated. The question of the organization of new States in this territory soon arose. This demand for State Government was a demand for the same political status which was enjoyed in the older States. It was to this that the southern and western pioneers had been accustomed, and with nothing else would they be content.

Creation of New States. The American idea of a State Government carries with it a written constitution, formed and adopted by the people to be governed under it. Hence, no Territory could be changed into a State without such a constitution. This has been recognized in every such change. A subordinate question, however, arose. Could the people of the Territory form and adopt a constitution without prior authority from Congress to do so? The practical answer is that they can. Such action may be taken, though it is customary for Congress

to express antecedently its willingness thereto. When the Constitution has been voted for by the people of the Territory, it must be submitted to the proper Federal officers for approval before it becomes operative. The Constitution must, of course, provide for a Republican form of government, and conform in all other respects to the Constitution of the United States. When the Constitution has been formed without congressional authority, it must be approved by Congress and also by the President. When Congress has been applied to, and has given its consent to the formation of the State, it leaves to the President the approval or rejection of the particular Constitution which may be proposed by the people of the Territory. Either method seems to be within the Constitutional powers of the Federal Government, though all States organized within recent years have obtained antecedent Congressional consent, and it may now well be doubted whether Congress and the President would concur in the other method.

Annexation of Texas. Texas came into the Union by an entirely different method. It had never been part of the United States. It had originally belonged to Spain, and on the successful termination of the Mexican revolution it became a part of the Republic of Mexico. It remained a part of that Government until March 2, 1836, when it became a separate nation, adopting the name, Republic of Texas. It remained an independent nation until by treaty between it and the United States it was annexed and became a part of that Government. As part of this plan of annexation the people of Texas, in 1845, adopted a Constitution appropriate to its changed condition as a State, and in the spring of 1846 organized its government as a State, which took its place as one of the States in the Republic of the United States of Amer-

ica. The United States Supreme Court has decided that the jurisdiction of that Government for revenue purposes began in December, 1845, but the State Government was not organized until 1846.

Status of New States. When a new State is received into the Union, whether by the organization of a State within territory formerly subject to the jurisdiction of the United States, or by treaty of annexation, as in the case of Texas, the new State takes the same position in the United States as that of each of the original States. It has the same rights and powers and is subject to the same duties and limitations as every other State in the Union.

United States Dependencies. In addition to the extension of its territory on the continent of North America, the United States has within comparatively recent years acquired extensive insular possessions. The conditions in most if not all of these are vastly different from those in the United States proper. The peoples inhabiting them are of different races, with sharply contrasting political development, traditions, and institutions. Many of them are said to be, and most probably are, incapable of helpful self-government. There are numerous and irreconcilable theories as to the proper policy to be pursued toward them. The one adopted by Congress and the President may be summed up in the expression that it is better for the inhabitants of these islands to have a good government for the people than a bad government by the people. They are subjected, therefore, to a strong centralized government receiving its powers from and sustained by the United States, instead of being allowed the privilege of establishing their own institutions, and of taking political charge of themselves. Theoretically this is as inconsistent as the banishment of American

Dissenters from the settlements of the Pilgrim Fathers, or of Andrew Johnson's reconstruction policy of bringing back into the Union the States which had struggled four years in an unsuccessful effort to get out of it. Government is a practical matter, and it may not be well to insist too strongly upon applying the same rule to others which one demands for himself. At any rate, the Philipinos are being fostered and educated in politics by methods which are acceptable to the Federal Government, and which the islanders are powerless to resist.

Amendments to the Constitution. Written constitutions are intended to be enduring; we frequently say permanent, but perpetuity is not to be expected of any human achievement. Hence the framers of the Constitution had either to provide for change by peaceful methods, or else invite revolution. They chose the former, and incorporated Article Five into that instrument.

This article provides two methods of amendment; one in which Congress takes the initiative, and one in which the initiative is taken by the States.

Congress upon a vote of two-thirds of both Houses can propose such amendments as it sees fit. Or if the Legislatures of two-thirds of the States shall join in a call for a convention to propose amendments, it is the duty of Congress to make the call. Amendments proposed in either of these ways must be ratified by three-fourths of the States. This ratification can be either by the State Legislature or by a convention called for that purpose.

Since the organization of the Government fifteen Amendments, proposed by Congress, have been ratified or declared ratified, and have thus become parts of the Constitution. Ten of these were made almost immediately after the adoption of the original Constitution, and two

others within a short while thereafter. The remaining three came with Reconstruction, and reflect a different public sentiment from that which prevailed when the Constitution was adopted. This new sentiment found still further expression in the construction put upon these last Amendments by Congress in the Civil Rights Act and similar legislation. In nothing since its creation has the Supreme Court of the United States exhibited its pre-eminent justice and loyalty to the Constitution as it is written more fully than in dealing with and setting aside the Congressional action which was claimed to be based on these Amendments.

RECAPITULATION.

The Colonies preceded the States. The thirteen original States preceded the United States.

The United States Government is formed by a written Constitution.

By the result of the Civil War the United States is proved to be a Federal State.

In American institutions sovereignty is divided as to subject-matter.

The people of the United States are sovereign as to all matters surrendered to them in the Federal Constitution.

The people of the respective States are sovereign as to all matters not surrendered by them in the Federal Constitution.

The Supreme Court of the United States has the authority to construe the Constitution of the United States and to bind all others in so doing.

The United States at different times in its history has acquired vast areas of territory in which there were no State Governments.

It has established Territorial Governments in most of the territory which is upon the North American Continent.

These Governments were temporary, operating under the authority of Congress.

Congress has further assisted in the establishment of many new States from these Territories.

Texas came into the Union by annexation.

A new State coming into the Union by whatever method assumes the same relations to the General Government and to the other States as those sustained by each of the original States.

The United States now has large and important dependencies, which it is governing on the idea that a good government from without is better than a bad government from within.

The Constitution may be amended in either of two ways: first, by proposals by Congress, and ratification by two-thirds of the States, either by conventions or by Legislative action, or, second, by proposal of a convention called by Congress, on request of the Legislatures of two-thirds of the States, and ratification by three-fourths of the States, as stated above.

There have been many amendments proposed. Fifteen have been ratified; ten within two years after the adoption of the Constitution, one within a short while thereafter, one in 1864, and three just after the Civil War.

QUESTIONS.

- I. 1. Explain the relation of the United States Government to the States composing it. 2. How was this Government formed?
3. How was the United States proved to be a Federal State? 4. By what means are the powers of the separate States divided from those of the Federal Government? 5. What are the arguments

for and against giving to the Supreme Court authority to construe the Constitution?

II. 1. In what ways has the United States acquired public lands, and what has been her policy toward these? 2. Explain the establishment of Territories, and their Governments. 3. How and upon what terms are new States created and admitted to the Union. 4. How was Texas admitted? 5. What is the policy of the United States toward her dependencies?

III. 1. What provisions are made for amendments to the Constitution?

CHAPTER XI.

LEGISLATIVE DEPARTMENT OF THE UNITED STATES GOVERNMENT.

Law Making. Law making is one of the highest powers and most important duties of sovereignty. It lies at the base of all control. Unless the will of the one in authority is formulated and made known, it is impossible for others to obey it. The rules made by sovereignty through governmental agencies for the control of those subject to it are laws.

Reasons Leading to the Establishment of Two Legislative Houses. Article 1, Constitution of the United States, provides:*

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Each sovereign in organizing its government through which it is to act makes such provisions for the exercise of its legislative power as it sees fit. The people of the original States who formed the United States government were of English descent, and were accustomed to the English methods. In their revolution they repudiated the

*Excerpts from United States Constitution are reproduced *verbatim ad literatim*.

doctrines which are represented in monarchical forms of government. Their minds naturally went back to the past in the Mother Country and their judgment naturally inclined to so much of the old machinery of government as could profitably be adopted here. Furthermore, the several States had had experience in legislation from which valuable lessons had been learned. Dealing with the matter in the light of all these facts the framers of the Constitution selected a form of legislature consisting of two branches or houses, which they thought would act as a check upon each other, and so greatly lessen the likelihood of imprudent and ill considered action. An additional argument in favor of two houses was found in the opportunity which they afforded to give representation to the people as a whole as well as to the States in their organized capacity. It was, therefore, determined that the Legislative Department of the United States Government should consist of two branches or houses known separately as the Senate and the House of Representatives, and together called Congress.

Provisions Applicable Alike to Both Houses. Article I also provides:

SECTION 4. [§ 1.] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[§ 2.] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. [§ 1.] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[§ 2.] Each House may determine the Rules of its Proceedings, punish its members for Disorderly Behaviour, and, with the Concurrence of two-thirds, expel a Member.

[§ 3.] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one-fifth of those Present, be entered on the Journal.

[§ 4.] Neither House, during the Session of Congress, shall without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. [§ 1.] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[§ 2.] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Each House is the exclusive judge of the election and qualification of its own members, and by a two-thirds vote may expel a member. Each House makes its own rules of procedure, and keeps a journal of its proceedings, a majority of the members of each constituting a quorum. Less than a quorum cannot attend to regular business, but they may adjourn from day to day, and to secure a quorum may compel the attendance of absent members. Bills of all sorts may originate in either House, with the single exception that bills for raising revenue

must originate in the House of Representatives. These may, however, be amended in the Senate.

The Senate: How Constituted: Recognition of Statehood. Article I, Section 3, provides:

SECTION 3. [§ 1.] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[§ 2.] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[§ 3.] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[§ 4.] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[§ 5.] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[§ 6.] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

[§ 7.] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

The Senate is composed of two Senators from each

State, elected by the State Legislature. It ignores entirely every other basis of representation, such as wealth, territory or population, and gives to each State equal representation. Each Senator has one vote, and is the equal of every other, so that the State which he represents has equal rights in that body with every other.

As no bill can become a law without the concurrence of the Senate, the power thus afforded to each State to protect itself is great. To be eligible to the Senate one must be at least thirty years of age, an inhabitant of the State from which he is elected, and must have been a citizen of the United States for nine years preceding his election.

Election of Senators. The time and manner of electing senators was originally left with the Legislatures of the several States. Congress, however, has the power to change such regulations as the States may make except as to the place of holding the elections. In 1866 Congress exercised this power, and provided a uniform plan for the election of Senators by the several State Legislatures. Under this law the Legislature which is the last chosen before the expiration of the term of any Senator is required to elect his successor. It must take the first vote for this purpose on the second Tuesday after it convenes. This vote is taken in each House separately. The two Houses meet at 12 m. the next day in joint session, the vote taken the day before is announced and the result declared. If the same person receives a majority of the votes in each House, he is elected. If no one has secured a majority in each House, there is no election, and this fact is declared. The two Houses then proceed to take a vote, and if a majority of all the members of both Houses are present to vote, a candidate securing a majority of this joint vote is elected. If no one secures such a

majority during this joint session, the two Houses separate; but they must meet at 12 m. of each succeeding day until a Senator is chosen, and take at least one vote. When the choice is made the Governor and Secretary of the State certify the fact of the Senator's election to the President of the United States Senate. At the appointed time the Senator-elect presents himself before the Senate, is sworn in, and begins the exercise of his official duties.

Term of Office and Division Into Classes. It is thought best to have the Senate a continuous body so far as this can be done consistently with the ideas of continued official responsibility to the people and of rotation in office. Hence, the Constitution provides that the term of office of a Senator shall be six years; that at the first meeting of Congress the Senators should be divided into three classes, one class to hold office for two years, one for four, and one for six. As the persons elected to succeed the retiring Senators are each elected for six years it follows that the terms of one-third of the Senators expire every two years, and that at each session of Congress one-third of the Senators have been recently elected, one-third have had office for two years, and one-third for four years. As it is quite customary to re-elect Senators for several terms it turns out that a very large percentage of the body each year are men of large legislative experience. As each new State comes into the Union it elects two senators, and they are assigned by lot drawn in the presence of the Senate to one or the other classes, so that the division into classes and the continuity of the body is preserved.

Filling Vacancies. If a vacancy occurs in the office of Senator when the Legislature of the State is not in session, the Governor of the State appoints some one to fill the place until the Legislature convenes, when that

body proceeds to elect a Senator to fill the unexpired term. This election is conducted in the manner described above. If the Legislature is in session when the vacancy occurs, it elects the successor.

Organization of the Senate. The Senate is presided over by the Vice-President of the United States. When there is no Vice-President, or when he is absent, the body elects a President *pro tem.* from among its own members. The Vice-President is not a member of the Senate, and has no vote except in case of a tie, when he casts the deciding vote. The President *pro tem.* is a member and has a vote on all questions. The organization of the Senate is completed by the selection of a Secretary, a Postmaster, and a Chaplain, and by the appointment of various committees from its members.

The House of Representatives: How Constituted. Article I, Constitution of the United States, provides:

SECTION 2. [§ 1.] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[§ 2.] No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[§ 3.] Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, [which shall be determined by adding to the whole Number of free Persons,] including those bound to Service for a Term of Years, and excluding Indians not taxed, [three-fifths of all other Personal]. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative;

[and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.]

[§ 4.] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[§ 5.] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

The House of Representatives is the popular branch of Congress, or the branch most directly representing the people. Its members are apportioned among the States on the basis of population, giving to each State the number to which its inhabitants entitle it. The only deviation from this is when a State does not have as many inhabitants as is required for one Representative. In this case it is allowed one Member. Under this condition a State would have more Senators than Representatives. The number of inhabitants in the several States is ascertained by the last preceding United States census, excluding Indians not taxed from the count. By the Fourteenth Amendment to the Constitution Congress has authority to reduce the representation of the States by excluding from the count in any State all male inhabitants of twenty-one years or over who are citizens of the United States and are not allowed to vote, except those whose disfranchisement is because of crime or for participation in the Civil War on the side of the Confederacy.

Under this arrangement for two houses the influence of the smaller States in Federal legislation is secured by their equal representation in the Senate, while the larger growth of the more populous States is represented in their larger delegations in the House. The House cannot

pass laws without the concurrence of the Senate, which protects the States; the Senate cannot legislate without the House. Thus the general equilibrium is maintained, which protects the people.

Eligibility to the House of Representatives. To be eligible as a Representative in Congress one must be at least twenty-five years of age, an inhabitant of the State from which he is chosen, and must have been a citizen of the United States for seven years. The Representatives hold office for two years and are not divided into classes, so that it is theoretically possible for a House of Representatives to be composed entirely of new members. This never occurs in fact, for in every Congress a very large number of those who have been members of preceding houses are re-elected.

Qualifications for Electors. It is a singular fact that the Constitution of the United States does not prescribe the qualifications of those who shall be entitled to vote for members of the House of Representatives or for Presidential electors, nor does it confer upon Congress the power to do so. On the other hand it expressly directs that persons entitled to vote for the most populous house of the State Legislature in each State shall have the right to vote for Representatives. Each State, subject to the limitations as to disfranchisement of persons on account of "race, color, or previous condition of servitude," decides for itself who shall vote for members of its own Legislature, and under the provisions above referred to this determines who shall be entitled to vote in that State for members of Congress and Presidential electors. Congress, however, has the power to make and enforce other regulations as to the manner of holding elections for Representatives.

Just after the war Congress exercised this power quite extensively, but has since repealed all such regulations except one fixing the time of such elections, which requires elections for Representatives in Congress to be held throughout the United States on the Tuesday after the first Monday in November of each alternate year. As there are no Congressional regulations of the matter in other respects, the power to provide for the manner of conducting such elections is in the several States.

It is the custom to divide each State into as many Representative districts as it is entitled to have members in the House, and to have a Representative elected from each by the voters in it. Other plans may be and sometimes are adopted.

Length of Term and Filling of Vacancies. The Representative holds his office for two years. If a vacancy occurs the Governor of the State orders an election for a successor in the district in which it occurs.

Organization of the House. The House chooses its own presiding officer from among its members. He is called the Speaker, and has great power in the appointment of committees and in controlling the order of business in the body when in session. Each House of Representatives chooses its other officers, consisting of a Clerk, a Sergeant-at-Arms, a Doorkeeper, a Postmaster and a Chaplain. It is not ready for actual legislation until the Speaker has announced the several committees, to some one of which every bill introduced must be referred.

President's Connection With Legislation. Articles I and II, Constitution of the United States, provide:

SECTION 7. [§ 1.] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[§ 2.] Every Bill which shall have passed the House of Repre-

sentatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[§ 3.] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

The President's power in connection with legislation is one of the marked examples of an officer in one department having authority and owing duty in another. These powers and duties extend to affirmative sugges-

tions as to proper legislation, and to restraint as to improper measures.

By combination of these means he can effect a great deal in shaping and controlling the policy of the Legislative Department, and in determining what laws shall be enacted.

President's Initiative. The President's initiative in legislation is exercised in several ways; one is by calling Congress or either House together in special session, when he thinks that the public interest requires it, thus giving opportunities for passing laws to meet emergencies in the life of the Nation. Another method is by sending messages to Congress giving them information on public matters, and yet another is by suggesting and pressing on their attention measures which, in his judgment, ought to be legislated upon, giving his reasons for so believing.

The Veto. The President's check upon legislation to which he is opposed is exercised most directly through his veto power. Every statute or resolution requiring the joint action of the two houses, after it has passed both, must be sent to him before it can become effective. If he approves it, he endorses this fact on the act, and files it with the Secretary of State, and in due time the measure becomes a law. If he disapproves of it, he endorses this fact on the bill, stating the reasons for his opposition, and sends the bill with a statement of his objections to the House in which the bill originated. That House may abandon the matter, in which case the bill is lost, or it may take it up for future action. If the bill gets the votes of two-thirds of the members of that House, it is sent, together with the President's message regarding it, to the other House for its action; and if it is taken up

there and secures a two-thirds vote in its favor, it becomes a law, notwithstanding the President's veto. If it is not acted upon by the last House, or fails to secure a two-thirds vote, it is lost.

If the President shall fail to act upon a bill for ten days, exclusive of Sundays, while Congress is in session, the measure becomes a law as if approved. If Congress adjourns within ten days of the time when the bill reaches the President, the bill is defeated, unless the President approves it before the adjournment of Congress.

RECAPITULATION.

Law-making is one of the most important functions of government. There can be no government without it.

Every American Legislature is composed of two houses. In Congress the Senators represent the States, and the Representatives, the people.

There are two Senators from each State. They are elected by the State Legislatures.

Representatives are apportioned among the States according to population, and are elected by the people. The Constitution states that all persons entitled to vote for the members of the larger house in the State Legislatures of the respective States may vote for Representatives, hence the different States decide who, in each of these, may vote for Representatives in the Congress.

Senators hold office for six years, and are divided into three classes, whose terms begin at different times, so that always two-thirds of the Senators have been members of the preceding Congress. Representatives hold office for two years.

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Vice-President is not entitled to vote except in case of a tie.

The House elects its own presiding officer, called a Speaker, and its other officers of importance. The Speaker is a member of the House, and is entitled to a vote on all questions.

The President has a very great influence on legislation, first, by information and suggestion made as to measures he desires enacted into law, and, second, by vetoing measures to which he is opposed.

A bill which has been vetoed by the President must be sent by him to the House in which it originated, accompanied by a statement of the reasons for his disapproval. It may then be considered again by Congress; and, if voted for by two-thirds of each House, it becomes a law notwithstanding the veto.

QUESTIONS.

I. 1. Why is law making one of the most important functions of government? 2. Of what Houses does the Federal Legislative Department consist, and what is the importance of this division? 3. What provisions are applicable to both Houses?

II. 1. How is the Senate constituted, and whom does it represent? 2. How are Senators elected, and for what terms do they serve? 3. How are vacancies filled? 4. Give the organization of the Senate.

III. 1. How is the House of Representatives constituted, and whom does it represent? 2. How are these members elected, and for how long do they serve? 3. Give the organization of the House.

IV. 1. Give the President's connection with the Legislature.
2. Discuss in full his initiative and restrictive powers.

CHAPTER XII.

THE POWERS OF CONGRESS.**United States Government One of Enumerated Powers.**

In dealing with the powers of Congress it must be remembered that the Government of the United States is one of enumerated powers, and can do nothing which it is not authorized to do by the Federal Constitution. This authority must be either express, that is, directly and specifically conferred in words, or so connected with and essential to the exercise of some power expressly conferred that it can be reasonably implied that the people in making the Constitution intended that the Government should have authority to do the thing in question. The first class of powers, those conferred in direct words, are called express powers. Those not conferred in direct words, but which are reasonably included in those expressly conferred, are called implied powers.

Unauthorized Action Void. There is no longer any question that acts passed by Congress which are not within the express or implied powers conferred upon it by the Constitution are of no legal effect, and cannot be enforced as law. Frequently in court the validity of acts of Congress is called in question on this ground. In such cases the question is not that of the wisdom of the act, for this is a matter of policy with which courts cannot deal. The question is this: Does the Constitution of the United States either expressly or impliedly grant to Congress the power to legislate as it has. If it does, the act is law, and must be obeyed. If it does not, the supposed law is an absolute nullity. To prove an act to be null it is not necessary to point out some provision or clause in the Constitution which the act violates. This would,

State that part which would be due by them if every person in the United States paid the same sum. This would result in very unequal taxation among the several States, and such inequality was one of the evils which the General Government was organized to prevent. For example, if congress desired to levy a direct tax on land, it could not fix a certain per cent. to be levied on the value of land throughout the Union, but would have to take the entire amount which was to be raised by the tax, apportion this among the several States according to the population of each, and then require the payment in each State of such per cent. on its land values as would yield the sum to be collected in that State. If a State had many inhabitants and cheap lands the per cent. to be paid on the values of land in it would be much larger than in one where the inhabitants were few and the lands very valuable. For this reason, among others, Congress has practically abandoned direct taxation as a means of raising revenue; but the power exists, and may be exercised by any Congress which sees proper to do so.

Indirect Taxation. The Federal Government derives its revenue principally from indirect taxes, which, as has been shown, are taxes levied on any person with the expectation that he will reimburse himself from some other person who is to deal with him regarding the thing taxed. These indirect taxes are principally duties charged for the privilege of bringing foreign goods into the United States, usually called tariff charges; and excise taxes, which are charged for allowing certain occupations, or for doing certain things. These excise taxes are usually called licenses, and are collected principally, though not entirely, from persons engaged in the manufacture or sale of intoxicating liquors, tobacco, and simi-

lar articles. It is under this power of collecting excise that congress can and occasionally does impose taxes for the making of certain kinds of documents. These charges are most frequently collected by requiring the maker of such instruments to affix to them certain stamps which have been bought from the government. For this reason the acts imposing them are called stamp acts.

Collection of Taxes. People do not pay taxes voluntarily, so the Government is compelled to employ a large number of officers known as Collectors of Customs, and Internal Revenue Collectors. Each has various assistants.

Power to Establish Postoffices and Postroads. Effectual means for the speedy and safe communication of information throughout the whole United States are essential to the general well-being of the people. It was thought wise to give to the Federal Government direct power to provide for such means. Hence all the postoffices throughout the land are in charge of the United States Government. Possibly that Government does nothing that adds more to the prosperity and comfort of the people than this. As a partial re-imbursement for the great expense thus incurred the Government requires every one sending matter through the mails to pay a small sum for the service rendered. This is collected by the sale of stamps of different denominations, and by requiring a certain sum in stamps to be attached to each article or letter deposited in the mail for carriage. The grant of power to Congress is to establish postoffices and postroads, and while this was designed for transmitting information in writing or print, within certain limits the postoffice carries goods and sends money.

Powers Regarding Borrowing Money, Coining Money, Issuing Bills of Credit, and the Payment of Debts. To pay the debts and "provide for the common defense and

general welfare of the United States," to "borrow money on the credit of the United States," to "coin money, and to regulate the value thereof and of foreign coin," are among the express powers of Congress.

The States are forbidden "to coin money," or "to make anything but gold and silver coin a tender in payment of debts."

While the matters covered by the foregoing quotations from the Constitution are quite different in some respects, they all relate to finance and business, and so affect one another that it is well to consider them in the same connection.

Power to Borrow Money. Debts can properly be paid only with money. Ordinarily the United States raises money by taxation, but it is frequently quite difficult to estimate in advance the expenses of the Government, and even when this can be done it is frequently difficult to obtain at once the needed money by taxation. So to make the Government efficient it was necessary to give it power to incur and pay debts as well as to tax.

Necessity for a Circulating Medium. Neither public nor private business can be done without some convenient standard by which to measure values and which all persons are willing to accept and use. Such a standard should be uniform, durable, convenient in form, and of such character that the ownership of it will pass with it from one person to another. To give it uniformity of value it should be made of some material having value in itself, and free, as far as possible, from fluctuation on account of changes in the values of other things. For convenience in use it should be divided into small quantities, and for the purpose of giving the public ready confidence in it, it should bear on its face evidence of its value. The material of which it is made should be dur-

able, so that it will not perish or waste in the using. It should be made by some competent authority a means by which debts of some kinds may be paid without the assent of the creditor. A commodity having such qualities could be safely adopted and used as a means by which to measure the values of other things and with which to do business generally. Without such a safe and freely circulating medium business can not be successfully carried on.

As money is used all over the world, and as it is quite difficult to maintain uniformity in its value under the most favorable conditions, it was wise to confer the power to coin it and regulate its value upon the Federal Government.

Coining Money. Long before the Constitution was written gold and silver were the materials out of which money was made, so the Constitution does not name these, but simply gives the power to "coin" money. Gold and silver are not money unless they are coined. A gold ring or a silver spoon is not money. Each has a market value as a commodity, and that market value is affected by the fact that the material in it can be coined into money. The coining of money is within the exclusive prerogatives of Government. Before gold or silver can be coined it must have a designated fineness or quality. The proper officer of Government takes metal offered for coinage, examines it, and if it is of the right quality it is separated into small quantities, weighed with great accuracy and stamped in the Government mint. The imprint thus made and stamped on the metal is the Government's certificate that the coin is worth what the stamp imports. It is this certificate which makes the coin pass as money. The necessity of having all the gold and silver money coined and certified

to by the same government is easily seen. So clearly did the framers of the Constitution perceive this that they not only gave the power to the United States, but expressly denied it to the States.

United States Coins and Their Denominations. The money unit in the United States is the dollar. All coins are made into dollars, multiples or fractions of dollars. The gold coins are dollars, two and a half, five, ten and twenty-dollar pieces. The silver coins are dollars, half dollars, quarter dollars, and dimes. The Government stamps nickel as five-cent pieces, and copper or pennies as cent pieces. These are very useful in such dealings as require small change. They are generally accepted and used for this purpose, though they are not money.

Legal Tender. There is no express grant to the Federal Government of the power to determine what shall be legal tender for debts. For a long time the existence of such power was generally denied, but later the Supreme Court decided that the Government has such power, and the matter is now settled in that way.

To tender is to offer. A tender to pay a debt is an offer to pay it. For such offer to be a "legal tender" the payment must be offered to the creditor in something that he is bound in law to accept. The right to decide what shall be used in making legal tenders is a very important one, and it is appropriate that it should be exercised by some authority which extends throughout the whole Union.

Gold and Silver Coins as Legal Tender. The Constitution recognizes the right in the State Governments to make only gold and silver coins tender for debts. The United States Government has always made gold coin legal tender for debts of all kinds, public or private, but smaller silver coins are legal tender only for debts of ten dollars or less.

Money Defined. Money is gold or silver coined by the Government and made a legal tender for debts. Nothing which lacks any of these characteristics is in legal contemplation money. It may be a convenient representative of and substitute for money, and may be generally accepted as such, but it is not money in the legal sense.

Power to Make Promises to Pay. The United States Government is expressly authorized to borrow money. It is not expressly authorized to "emit bills of credit." This last power is expressly denied to the States. Taking the Constitution in all its parts it has been decided that the United States may exercise this power also. Therefore Congress can borrow money on the credit of the United States, and give such written evidences of its indebtedness as it finds most to the advantage of the Government.

United States Bonds. When money is borrowed for a designated time, and the loan is to bear interest, the Government usually gives a bond which recites these facts. This bond is not money, nor does it circulate as such. It is a promise to pay a certain amount of money at a certain time. So long as the credit of the Government is good, it is a valuable investment.

Treasury Notes. The Government has issued other promises to pay in different forms. Among these are promises to pay a named sum of money, usually a small one, to any one who will present the paper containing the promise to the Treasurer of the United States. These promises are all treasury notes and most of them are so called, but some of them are legal tender and some are not. It is convenient to have some way to distinguish them, and as they are printed on conveniently sized tough green paper, those which are legal tender are popularly known

as "greenbacks." They are not money, but simply promises on the part of the Government to pay money. If the people believe that upon presentation at any time the debt will be paid in gold or silver, the paper is quite as satisfactory and much more convenient than coin. If the Government could not pay, these promises would become practically worthless.

United States Bank Notes. At an early day it was decided that the United States had the power to create a bank to be operated by it in carrying on its financial affairs. This idea has since been greatly extended. The Government now provides for and controls a large system of banks. When this plan was first adopted the United States had issued a large number of bonds for large sums of money which were not to become due for a long time after their issue. A law was passed authorizing the chartering of banks, each of which should acquire a portion of these Government bonds and deposit them with the Comptroller of the Treasury. These banks were then authorized to issue under the supervision of the Comptroller of the Treasury a limited number of its notes payable to bearer on demand. These notes state on their face that they are secured by a deposit of United States bonds, and will be received by the Government for all debts due to it, except import duties, and interest on the public debt. This law is the basis of the National banking system. A great many banks have been chartered under it, and a great many bank-notes have been issued by them. These notes circulate freely and are generally regarded as money.

Gold or Silver Certificates. For a long time after the organization of the Government it actually coined money in large quantities; but in later years a more convenient way of providing a circulating medium based on the un-

coined bullion has been adopted. The owner of the gold or silver metal called bullion carries it to the mint, where the Government officers test its quality and amount. They estimate the amount of money that could be coined from it, and give in its place to its owner a number of certificates showing that there has been deposited with the Government a certain amount of gold or silver, and that the Government will pay to any one presenting any one of these certificates the amount called for by it. All these certificates taken together equal the coin value of the bullion deposited.

From the foregoing it is seen that a very small portion of our circulating medium which we call money is actually entitled to that name. These promises to pay money are much more convenient than coin, and the people are much accustomed to using them. We naturally, therefore, come to think and speak of them as money; still, they are essentially different from it, and it is dangerous to let the thought that they are money become fixed in the mind. In a country like ours, where every one has political influence and responsibility, no one can afford to have wrong conceptions of these important matters.

RECAPITULATION.

Congress is expressly empowered to lay and collect taxes, duties, imposts, and excises. All duties, imposts, and excises must be uniform throughout the United States, and all ad valorem or other direct taxes must be apportioned among the States according to their population.

On account of the requirement as to the manner of apportionment among the States it is impracticable for the United States to levy and collect direct taxes. Hence revenue is raised almost exclusively by indirect taxes.

Congress has express power to establish postoffices and

postroads; under this postoffices are maintained for carrying written and printed matter, small parcels of merchandise, and for transmitting money. The Government makes a small charge for such service, which is paid in postage stamps, previously issued by the Government and paid for by the user.

Congress has express power to coin money, borrow money, and pay the public debt.

The States are forbidden to coin money, to emit bills of credit, or to make anything but gold or silver coin a legal tender for debt.

From the express powers given to Congress and from those denied to the States it is decided that Congress can emit bills of credit and make other things besides gold and silver a legal tender for debt.

Money is gold or silver which has been coined by the government and made a legal tender for debt.

The money unit in the United States is the dollar, and all coins are either dollars or multiples or fractions of dollars.

Nickels and pennies are not money, but are considered and generally accepted as a substitute for money.

A legal tender is a circulating medium which the United States compels all creditors or creditors of certain kinds to receive in payment of debts due them.

Gold and silver dollars are legal tender in the United States for any amount. Silver coins of less than a dollar are legal tender for debts of ten dollars or less.

Congress has power to make its promises to pay money receivable for public debts and legal tender for private debts. Congress has exercised this power to some extent as to several kinds of such promises.

Bonds are written promises to pay at a certain time specified sums of money to a person named or to any

one to whom he may sell the bond. Usually they bear interest at a rate agreed upon between the parties.

The United States has power to issue bonds, and has done so in large amounts. Many such bonds are still outstanding. They are most of them owned by National banks, and deposited with the Government to secure the notes issued by these banks.

The United States has the power to give its written promise to pay to persons to whom it is indebted, or to their order. These promises may be to pay at a named time, or on demand. When issued such promises may be made receivable for public debts of all kinds, or of named kinds. They may also be made legal tender for private debts.

Congress has issued a great many such promises, usually called treasury notes. Some of these are known as "greenbacks."

Congress has created a system of National banks and authorized them to deposit United States bonds with the Government. Each bank may issue notes payable to bearer in sums aggregating the face value of the bonds deposited by it. These notes also circulate as money.

Instead of coining gold and silver bullion, the Government receives it on deposit and issues certificates to the owners, which are redeemable when presented by payment by the Government of the designated amount of gold or silver. These are called gold and silver certificates, and circulate as money.

Treasury notes, greenbacks, bank notes, gold and silver certificates are none of them money. They are promises to pay money, and depend for their value and use entirely upon the ability of the promisors to pay the money called for.

QUESTIONS.

I. 1. Explain the difference between express and implied powers. 2. When is an act of Congress valid? 3. Under what three main classes do the express powers given in the text fall?

II. 1. The taxing power of Congress includes what classes of taxation? 2. What are the objections to direct taxation, and how does the Government avoid these? 3. Enumerate the indirect taxes, and explain each. 4. By whom are taxes collected?

III. 1. Why is the establishment by the Government of post-offices and postroads so important? 2. How does the Government reimburse itself for their cost?

IV. 1. Enumerate the powers of Congress regarding finance. 2. Why is the power to borrow money necessary? 3. What is the necessity for and what should be the qualities of a circulating medium? 4. Give the process of coining money. 5. By whom may this be done? 6. Explain "legal tender," and what may be offered as such? 7. Define money. 8. What are United States bonds? 9. Treasury notes? 10. Gold and silver certificates? Distinguish between and give the origin of each. 11. Why are none of these money?

CHAPTER XIII.

LEGISLATIVE DEPARTMENT—THE POWERS OF CONGRESS (Continued).

Powers over Commerce. Commerce consists of traffic and intercourse, buying, selling, and transporting goods and commodities of all kinds, and transporting persons. It is impossible for any civilized people to live without it. As a people advances, its commerce increases; and as the means of communication between different sections increase, commerce is extended over larger territory. The commerce of the people of the United States with foreign nations, and among the different States, was great when the Constitution was adopted, and has grown

immensely since. Hence this power, which was always important, has now become one of the most far-reaching and indispensable of all those possessed by the Federal Government; but important and extensive as it is, it is not unlimited. Congress does not have power to regulate all commerce, but only that with foreign nations, among the States, and with the Indian tribes. All matters of domestic commerce are exclusively within the jurisdiction and control of the States.

Commerce With Foreign Nations. Commerce with foreign nations includes all commercial dealing between persons in the United States with persons in any foreign country, and the bringing and sending of merchandise of all sorts between the United States and such countries.

Commerce Among the States. Commerce among the States includes all traffic in commodities when they are to be removed from one State to another, or when it otherwise directly concerns more than one State, and the transportation of both property and persons from one State to another. The amount of this commerce is immense, and uniformity in its regulation is of supreme importance. The wisdom of giving it over to the Federal Government is continually shown.

Legislation Under This Power. Under this power Congress has passed a great many laws; too many to be enumerated here. Some of the more important of them are the various acts regulating navigation in its several forms; acts for the improvement and maintenance of harbors, navigable rivers and streams; the act creating the Interstate Commerce Commission, with various amendments thereto; and the United States anti-trust laws.

Necessity for Regulation. Carrying goods and per-

sons from one State to another by the railroads is absolutely essential to the business and comfort of the American people. Different necessities of life are produced more cheaply in some States than in others. Indeed, there is no single State in which all of these necessities can be easily and cheaply provided. The most practical and economical plan, therefore, is to produce each of these different commodities at the place best adapted to it, and to transport the finished product to those sections in which it is to be used. The people of the North need cotton. It is raised in the South and carried to them. The people of the South need manufactured articles. Many of these are made in the North and transported. Transporting these different products from one State to another is done very largely over railroads. The railroad companies are entitled to charge fair prices for this hauling, but they ought not to have more than a fair price. Again, if the roads should all refuse or even neglect to carry any useful product to a particular community, the result would be very hurtful to the people thus deprived. It might be something without which they could not live in comfort, and they might have no other way of getting it. In such cases the inconvenience and suffering would be great, sometimes even ending in death. Suppose, for example, that the railroads would not carry fuel of any sort to a certain town. The people could neither cook nor keep warm. This is an extreme case, and would occur very rarely, even without regulation of the roads. But such instances are not unknown. There are cases of unjust discrimination by the roads between their patrons, or between different communities. For instance, two men go into the wholesale grain business in the same town. The railroads coming into the town favor one of them

and charge him much less for carrying his grain than they do the other. The one favored can undersell his competitor, and so drive him out of the business, and thus having gotten rid of competition the former can charge the public higher prices than he could otherwise have done. Or, the controllers of a road interested in a certain town may give to all persons doing business there less rates than they will make to those in the neighboring towns, and thus build up the place in which they have interest. These are but illustrations of what those in control of large railroads might do if uncontrolled. These and many more similar wrongs were actually committed in connection with interstate shipments. To meet these conditions Congress passed a law for the regulation of railroads in their interstate business, and providing for the organization of an Interstate Commerce Commission to superintend the enforcement of this and other United States laws applicable to railroad companies in interstate traffic.

General Provisions as to Regulation. These regulations by Congress are quite comprehensive, forbidding almost all kinds of unfair action by the roads. The most important of these are: (1) All rates must be reasonable. (2) The roads must not discriminate unjustly between shippers or places. (3) They must not discriminate between different connecting lines. (4) They must not charge more for a "short haul" than for a "long haul" when the conditions are substantially the same. (5) They must not enter into any "pool" or similar agreement.

The Interstate Commerce Commission. This commission consists of five members, appointed by the President and approved by the Senate. They have power to supervise the roads engaged in interstate commerce, to in-

investigate their conduct and methods, and to make orders as to rates when disagreements arise between the roads and any person or place claiming protection under any act of Congress. They have no authority to sit as judges, condemn the roads, or assess penalties against them. This must be done by the courts. This law has been amended several times, and in each instance the amendment has been to strengthen the commission by giving it larger powers.

Anti-Trust Legislation. It is under the power to regulate international and interstate commerce that Congress has enacted the statute known as the anti-trust law. This is a law forbidding persons, natural or corporate, who are engaged in international or interstate commerce, from combining in such way as to destroy healthy competition. Combinations for such purposes are called trusts. They are exceedingly harmful in many of their results, and much effort has been made to prevent or control them. They still remain in business, though recent legislation and court proceedings seem to promise greater success in their suppression.

Relations of the Federal and State Governments as to Commerce. Interstate and international commerce are exclusively under the control of the United States. Domestic or intrastate commerce is exclusively within the control of the States. There is no doubt but that both of these propositions are correct. Congress has no power to make a law which directly controls domestic matters. A State has no power to make a law which directly controls international or interstate commerce. However, it is equally true that neither of these Governments can make a law directly affecting one of these matters which, when put into actual operation, does not indirectly affect the other.

Right to Regulate Carriers Who are Engaged in Both Domestic and Interstate Commerce. The same railroads are constantly engaged in the transportation of domestic and interstate shipments and passengers. These roads are legally entitled to receive from their business a reasonable return, covering fixed charges, running expenses, and fair profit. This income must come from all of the charges made for carriage of all kinds. If the State reduces charges on domestic commerce, this necessarily leaves more to be supplied by interstate charges, and *vice versa*. It seems to be settled that in all such cases the Government having the power of direct control is entitled to exercise it, notwithstanding that it may in so doing have an indirect effect upon the matter within the control of the other.

State's Police Power. Questions of the kind just considered are not the only ones arising in connection with these powers of the two Governments. Under the right to control international commerce and intercourse with other nations, Congress has jurisdiction over ports of entry, and may make such laws regarding them as in its judgment are proper to regulate such commerce within such ports. But the State in which the port is situated is also under obligation to protect the morals, health and safety of its inhabitants, and has the power to do so. Under this authority, called the police power, the State may rightfully establish and maintain proper quarantine regulations and enforce them against foreign vessels bringing goods and passengers into the port. These and many other points which frequently arise call for mutual good will and a spirit of respect and helpfulness between the Governments and their respective officers. Few controversies have actually arisen, and these have been so

satisfactorily adjusted that the difficulties are more in theory than in practice.

Powers of Congress over Bankrupts and Their Creditors. Congress also has the express power to establish uniform laws on the subject of bankruptcies throughout the United States.

A bankrupt is one who has failed in business, so that he is unable to pay his debts as they come due. Under some conditions it is well to let such an one distribute what he has among his creditors, and obtain a release from the portion of his debts which he cannot pay. This is better for the debtor, for he can begin business again without danger of interference from his creditors as soon as he has accumulated property. It is better for the creditors, for they frequently get more money with less expense and delay than if each should sue in the ordinary way. A man's business may be scattered through a number of States; thus it is clear that it is better to have proceedings in which all his creditors are parties, and by which they are all to be bound, regulated uniformly by Congress, than to have the States each making separate laws concerning them.

Under this power Congress can compel creditors to release the unpaid balance due from their debtors who have been declared bankrupt and whose estates have been *pro rated* and paid out in accordance with the law. Congress has several times exercised this power in the passage of bankrupt laws.

These laws permit the debtor who has failed to begin the proceedings in order to be discharged from his debts.

They also permit creditors of a debtor who has committed an act of bankruptcy—that is, who has failed to pay his debts, or who has given certain kinds of security under specified circumstances—to begin the proceedings.

Proceedings in Bankruptcy and Their Effect. It does not matter by whom the proceedings are begun, if the debtor is bankrupt and that fact is shown, the court takes charge of his property, sells it, and pays out the proceeds to the creditors, distributing it according to their respective rights. After the payments are made the debtor is discharged from any legal obligation to pay the debts not tainted with fraud which were proved up against him in the bankruptcy case; that is, he cannot be sued for any debts which he owed at the time and for which he obtained a discharge. If he makes debts later, he can be sued for those.

State's Power Over Insolvents. The grant of the power to make bankruptcy laws to Congress is equivalent to a denial of it to the States, so that no State can pass a law for taking charge of a debtor's estate, distributing it among his creditors, and compelling the creditors to release the debtor on payment of less than the whole debt.

There is also a clause in the Federal Constitution which forbids the States to pass laws impairing the obligation of contracts. This has the same effect, for to compel a creditor to take less than the whole amount due him on a contract, and give up his claim for the balance, necessarily impairs the obligation resting on the debtor to pay it all.

State Insolvent Laws. The States may, however, pass insolvent laws. These are laws very much like bankruptcy laws in their purposes and in most of their provisions, but there is this one great difference. They do not directly attempt to make the creditors discharge the debtor unless he pays the whole debt, though practically they often accomplish this; that is, the law will provide that the debtor may assign all his property to some one who will take charge of it for the benefit of those of his

creditors who will voluntarily come in and accept such payment on their debts as the property will cover, and who will release the balance. Those who desire come in and get their proportion of the money, releasing the whole of their claims. Those who do not agree to this cannot be made to do so, but they can take no part in or receive anything from the settlement. They hold their entire claims and collect them by ordinary suit, if they can find anything belonging to the debtor not covered by his assignment, or which he has acquired after the assignment has been made.

This right by the creditor to choose whether he will come into the settlement for his share of it, or remain out of it and try to collect all that is due him, is the point in which insolvent laws, which can be passed by a State, differ from bankruptcy laws, which can be passed only by Congress.

Patents and Copyrights. Congress has power to promote the progress of science and the useful arts by securing for limited terms to inventors and authors the exclusive right to their respective productions. Under this power Congress has enacted patent and copyright laws, which are most beneficial. They stimulate invention, authorship, and art, by giving to the persons whose ideas are protected a fair opportunity to receive pay for them.

Patent Laws. The laws giving protection to inventors and discoverers are called patent laws. To entitle an inventor to a patent his invention must be original and useful. If an inventor proves to the proper United States officers both these facts, the Government issues him a certificate to that effect. The law forbids all other persons to make, sell, or use such invention unless they have permission from the patentee. This gives the patentee

practical control over and monopoly of the invention and its use during the time provided for by the law.

Copyright Laws. An author of a book, pamphlet, or piece of music, or the painter of a picture, can obtain a copyright for his production by filing a copy or copies of his book or music or a description of his work of art with the Librarian of Congress in the time and manner set out in the acts of Congress; and upon payment of a small fee he is given a certificate of that fact, and that he claims to be the author or originator of the book, or work of art. In the patent office the officers look into the applicant's right to a patent before it is issued. There is no provision of law requiring an inspection of the book, etc., on which a copyright is taken out. Thus the copyright protects the real author only. The certificate from the Government shows only that the person taking out the certificate does not intend to give any one else the right to publish his book. Whether he is the real author and entitled to the exclusive right is not passed upon by the officer giving the certificate.

Naturalization. Congress has express powers "to establish a uniform rule of naturalization * * * throughout the United States."

Naturalization is the process of changing an alien into a citizen.

Citizens of the United States. The Fourteenth Amendment to the Constitution declares: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States in which they reside." This makes citizenship in the United States dependent upon one of two things: birth within the United States, or naturalization.

Citizenship by Birth. Birth within the United States means birth within the jurisdiction of the United States

rather than within its boundaries, though birth within its boundaries is very strong proof of birth within its jurisdiction. For example, the child of a citizen of the United States, whose parent is representing his country as a foreign minister or consul, is considered as born within the jurisdiction of the United States, even though he be actually born on foreign territory. On the other hand, a child born to a representative of a foreign country at Washington would be regarded as born without the jurisdiction of the United States, although actually born within its borders. The child of our minister, born abroad, is a citizen; the child of a foreign minister, born here, is an alien. It used to be held that no one could change his citizenship; but this doctrine is abandoned, and it is now recognized that he can do this.

Naturalization Exclusively in Jurisdiction of Federal Government. The power of Congress to naturalize, so as to make citizens of the United States, is exclusive, and cannot be exercised by the States. The States may, however, confer such rights upon persons resident within their borders as they see fit, even though they be such as are usually enjoyed only by citizens. The State can thus confer the right to vote; and, as the right to vote for the Federal Representatives and Presidential Electors depends on the right to vote for members of the House of Representatives in the particular State, it follows that the State can practically withhold the right of suffrage in Federal elections from citizens of the United States, and confer it upon persons not such citizens.

Who May be Naturalized. Any alien whose government is at peace with the United States and who is a white person, or of African descent, may be naturalized. But Chinese, Sandwich Islanders, and Burmese may not. However, the children of these classes who are born in

the United States, and whose parents are not in diplomatic service, are citizens.

Process of Naturalization. There are two distinct steps in naturalization: (1) The declaration of intention. (2) The actual adoption into citizenship. The first is a sworn statement by the alien, before some court of record or its clerk, that he desires to become a citizen of the United States, and to renounce all foreign allegiance. This must precede the final action by at least two years. The final action is taken by appearing before a court of record, in open court, and declaring on oath that the alien renounces all foreign allegiance, and will support the Constitution of the United States. He must also prove that he has made the former declaration in due form, that he has resided in the United States for five years and in the State or Territory in which the court is held for three years; that he is well disposed toward the United States, and has conducted himself properly during his residence therein.

Implied Powers of Congress. It is quite impossible to enumerate and discuss all the implied powers of Congress. In their nature they arise from different and often from changing conditions, and each state of fact with which Congress has to deal must be considered fairly, and the power of the Government determined in the light of the whole Constitution. Powers necessary to the efficiency of the Government, and which are fairly and reasonably to be gathered from the entire instrument, should not be denied. Powers not given by fair and reasonable interpretation are not to be supplied because they seem to be desirable.

Examples of Implied Powers: National Banks. There is no express power given Congress either to charter corporations or to establish banks. At an early day in our

history Congress did both. It chartered a corporation to do business as a bank. The purpose was to assist the officers of the Government in carrying on its financial operations. It was impossible to do what the Government was created to do without having money, and it was equally important to have safe and quick means by which to send money collected in one place to other places where it was needed. These were operations commonly performed by banks, and banking by the Government could be done more safely and satisfactorily by corporations than by private persons. Hence, the Supreme Court decided that the power to charter a bank and use it in carrying on the business of the Government was implied in the powers expressly granted to Congress, and that the act creating the banking company was valid.

Railroad Companies. Again, there is no express power conferred on Congress to charter a railroad company to build a railroad. But, as we have seen, it is empowered to establish postroads, and also it is charged with the duty of maintaining an army and of protecting the whole country from outside foes or serious insurrections. Armies and army supplies and equipment must be moved from place to place, and in order to be effective this change of place must be rapid and sure. So Congress, to enable it to accomplish these ends, chartered a railroad company to build a road across the continent, and gave to the company very great assistance in so doing. This is another striking illustration of implied power.

When the United States can Charter Corporations. We must not conclude from these two illustrations, in each of which Congress created a corporation, that Congress has power generally to grant charters to such companies. This is not true. If Congress undertook to charter a private corporation to carry on a mercantile bus-

iness, the act would be void, because the Federal Government has no general power to charter corporations, nor to carry on mercantile business. It can only grant charters when the purpose to be accomplished through the corporation is one which the government is expressly empowered to do, and when the corporation is a reasonable and proper means through which to accomplish that purpose.

RECAPITULATION.

Commerce means traffic and intercourse, buying, selling, dealing with and transporting goods or commodities, and also transporting persons.

Commerce between different nations, or between or among citizens or subjects of different nations, or transportation between different countries, is international commerce.

Commerce between or among the citizens of the several States, and which concerns more States than one, or transportation between different States, is interstate commerce.

Commerce entirely within a State is domestic commerce.

The United States Government has jurisdiction and control over international and interstate commerce. The respective States have jurisdiction and control over domestic commerce.

Congress has passed many navigation laws regulating international commerce and the coast trade in the United States.

Congress has passed laws forbidding railroad companies engaged in interstate commerce to make unreasonable rates, or to unjustly discriminate between shippers or places or different connecting lines, or to charge more

for a short haul than for a long one when the conditions are the same, or to enter into any "pool."

Congress has created the Interstate Commerce Commission to look after the enforcement of the laws regulating international and interstate commerce, and to investigate alleged violations of them, and to pass on the reasonableness of railroad charges when complaint is made. The Commission cannot try the roads and punish them for past violations of the law.

A trust is a combination between two or more persons, engaged or interested in the same business, by unlawful means, to prevent competition between them, and thus get advantage to themselves or to do damage to others.

Trusts affecting international or interstate commerce are within the jurisdiction of Congress, and it has passed strict laws prohibiting and punishing them.

Congress has the right to regulate interstate commerce and the railroads in carrying it on, although such regulations may indirectly affect matters exclusively within the jurisdiction of the States.

The States have right to regulate their domestic affairs, including State commerce, even though such regulations may indirectly affect interstate commerce.

Congress cannot, under guise of regulating international or interstate commerce, prevent the States from reasonable and proper use of their police power.

The States cannot, under the guise of exercise of their police power, unreasonably and improperly interfere with the regulation of international and interstate commerce by Congress.

Congress has the exclusive power to pass bankrupt laws. These are laws providing for the release of an insolvent debtor upon his giving up all of his property to his creditors, although it may not be sufficient to pay

his debts in full, although his creditors may not agree to the release.

States cannot pass bankrupt laws; but they can pass laws known as insolvent laws by which an insolvent debtor can be released from his debts to such of his creditors as agree to accept their legally proportionate share of his property as full payment.

A patent is a certificate by the Government declaring that the person named in it is entitled to the exclusive right to manufacture and sell a new and useful invention for a designated time.

A copyright is the exclusive right to publish and sell books or other literature, or music or pictures, or other works of art.

The United States has the exclusive power to issue patents and certificates of copyright.

Naturalization is the process by which an alien is changed into a citizen. Its regulation is exclusively with Congress. The rules must be uniform throughout the United States.

There are two steps in naturalization: the first is known as "declaration of intention," and the second, as "taking the oath of allegiance."

Chartering National banks and building railroads to carry troops and military supplies are instances of the exercise of implied power.

QUESTIONS.

I. 1. Define commerce, international commerce, interstate commerce, and domestic commerce. 2. By what power is each controlled? 3. State the purpose, duties, and organization of the Interstate Commerce Commission.

II. 1. Define a trust. 2. Why are they forbidden by Congress? 3. What is the anti-trust law? 4. What is the relation of the

Federal and State Governments as to interstate and State commerce? 5. What control has each over ports of entry?

III. 1. Define a bankrupt. 2. Who has the exclusive right to pass bankrupt laws? 3. What is the difference between a voluntary and an involuntary bankruptcy proceeding? 4. What is the effect of a discharge? 5. How do insolvent laws differ from bankruptcy laws, and by whom may they be passed?

IV. 1. Define a patent. 2. A copyright. 3. State the process of obtaining each.

V. 1. What is naturalization? 2. By whom may this power be exercised? 3. May one change his citizenship? 4. Who may and who may not be naturalized? 5. Explain the process of naturalization.

VI. Enumerate briefly the express powers of Congress.

VII. 1. What is meant by the implied power of Congress, and what must be guarded against in their interpretation? 2. Name and explain those given in the text.

CHAPTER XIV.

THE EXECUTIVE DEPARTMENT OF THE FEDERAL GOVERNMENT.

[ARTICLE II.]

SECTION 1. [§ 1.] The executive Power shall be vested in a President of the United States of America. He shall hold his office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

[§ 2.] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[ARTICLE XII.]

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves;

they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

[§ 3.] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[§ 4.] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the

Age of thirty-five Years, and been fourteen Years a Resident within the United States.

[§ 5.] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[§ 6.] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[§ 7.] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

“I do solemnly swear (or affirm) that I will faithfully execute “the Office of President of the United States, and will to the best “of my Ability, preserve, protect and defend the Constitution of “the United States.”

SECTION 2. [§ 1.] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[§ 2.] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[§ 3.] The President shall have Power to fill up all Vacancies

that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

The President. The Constitution declares, "The executive power shall be vested in a President of the United States of America." It proceeds to enumerate his powers and duties, and among these says, "He shall take care that the laws be faithfully executed." These two provisions give in general outline the nature and scope of Presidential authority. He is to faithfully execute the will of the sovereign people as expressed in the laws which they have made through their constitutionally appointed representatives. Under other provisions, as to communications with Congress and the veto, he has large prerogatives in determining what the law shall be. He may express his desires that a certain policy should be carried out by appropriate legislation, and give his reasons for so doing, and he may veto measures which he does not approve. These are steps in the enactment of law. But if Congress shall not concur in his views, either by refusing to pass measures which he has favored, or by passing measures of which he has disapproved, he is as much bound by such action as the humblest citizen

in the land. It is the law as made by Constitutional authority which he is to execute, without reference to his personal opinion as to its expediency.

It is apparent that when the Constitution was adopted the President was the only executive officer peculiarly in the minds of the people. The plan for his selection is elaborate. The methods contained in the original instrument proved unsatisfactory. It was changed by the adoption of the Twelfth Amendment, which took effect September, 1864.

Manner of Election. The President and the Vice President are not elected by direct vote of the people, but by a number of electors, selected in each State as its Legislature may determine, and equal to the whole representation of that State in Congress. These electors constitute the Electoral College. They meet in their respective States, and each votes by ballot for one candidate for President and one for Vice President. A list of these ballots is then made up, certified, sealed and transmitted by messenger to the capitol of the United States, directed to the President of the Senate. This officer opens the lists and counts the ballots in the presence of both Houses of Congress, and announces the result. If any person has secured a majority of the votes cast by the electors for President, he is declared elected to that office. If any has secured a majority of the votes cast for Vice President, he is declared elected to that office. If no one receives a majority of all the votes for President, there is no election to that office, and the House of Representatives proceeds at once to choose a President by ballot from the three candidates having the highest number of votes. In such election the representatives vote by States, the representatives from each State having in the aggregate one vote. Two-thirds of the States must partici-

pate, and a majority of all the States is necessary to an election. If there is no election of a Vice President by the Electoral College, that fact is announced, and the Senate proceeds to elect that officer, choosing between the two candidates having the largest vote. The Senators vote individually, and not by States. Two-thirds constitute a quorum, and a majority of the whole Senate is necessary to a choice.

It follows, from the above provisions, that a majority of the votes cast for the electors by the people is not necessary to an election of a President or a Vice President; in fact, it has several times occurred that the man elected President had received a minority of the popular vote. The several political parties nominate their respective candidates. These parties may be about equally divided in one State, and one of them carries it by a thousand majority and elects all of the electors of the State from that party. This, of course, gives the whole vote of that State to the candidate of the successful party. In another State, equally populous and having the same number of electoral votes, the two parties are not equally divided, but practically all the votes belong to the party which was defeated in the other State. The candidate of this party gets almost all the popular votes of that State, but in the Electoral College he only gets the electoral vote of that State, which, in the supposed case, is the same as that given the opposing candidate by the first State. As between these States there would be a tie in the vote, and no election; but a third State selects electors favorable to the candidate who was successful in the first State; they put their vote with the votes of the first State and make an election. The majority of the successful candidate in the third State

may have been small, and the total popular vote secured by the successful candidate in States one and three may not equal the majority of the unsuccessful one in the second State, yet the one getting the majority of the electoral vote gets the office, to the exclusion of the one who has the majority of the popular vote.

President's Duties: Head of the Executive Department. The duties of the President are very great. He is the head of the several departments of the executive branch of the Government, and upon him rests the ultimate responsibility as to each. These departments are now nine in number, viz.: Department of State, of the Treasury, of War, of Justice, of the Postoffice, of the Navy, of the Interior, of Agriculture, and of Commerce and Labor. The first of these historically antedates the office of President. Those of the Treasury, of War, of Justice, of the Postoffice, and of the Navy were created practically upon the organization of the Government. The Department of the Interior was created in 1849, of Agriculture in 1889, and of Commerce and Labor in 1902.

Each of these Departments is in charge of a chief, or head, called Secretary of the particular Department, except in the case of the Department of Justice, in which he is called the Attorney General, and in the Postoffice, in which he is called the Postmaster General. In the departments there are thousands of subordinate officers, each of whom is responsible to his chief, and whose official action, in its ultimate results, affects the President either for good or bad.

The heads of these Departments constitute the President's Cabinet. They have two meetings each week. Their purpose is to keep the President fully informed upon all matters of importance, mutually to advise and counsel one another and the President, and to receive

instructions from him. The President is the real authority, and has the final decision of all questions in his hands. He gets the best information and advice that he can, and then determines large matters of policy himself, leaving the details and administrative part of the scheme to the heads and the subordinates of the Department to which the matter pertains.

It is a singular fact that there is no reference in the Constitution to any of these Departments, as such, except in general terms. In stating the duties of the President it is said that "he may require the opinion in writing of the principal officers in each of the Executive Departments upon any subject relating to the duties of their respective offices." This does not seem to foreshadow Cabinet meetings of the kind now in vogue. There is nothing in the Constitution indicating the number of the departments, nor the manner of their establishment or organization; hence, the whole matter is left with Congress and the President. The present arrangement has grown up under their joint action, and is very effective. It has the advantage of flexibility and ease of adaptation to varying conditions as the Governmental needs may suggest or require.

Pardons. The pardoning power is also vested in the President. It is one of extreme importance and delicacy. Errors are constantly made in the administration of the criminal law, and in many instances change of conditions subsequent to the trial make it proper to relieve from penalties, justly and legally imposed at the time the judgments were entered. These nice balancings between justice and mercy, determinations as to upholding the adjudications of the courts, and setting them aside in proper cases, taxes to the utmost both the brain and

sympathy of the most capable. This all falls upon the President.

Treaties. The next duty imposed upon the President is to make treaties with foreign Nations. In this he acts in conjunction with the Senate, but the initiative is with him. Usually the terms of the agreement are passed upon and arranged with the foreign power, and the matter in its final form is presented to the Senate for its judgment. Occasionally the President asks the judgment and advice of the Senate before arranging the final terms with the other Nation.

A treaty is an agreement between two or more independent states, and not a legislative act. But, under the Constitution of the United States, treaties made with other Nations are declared to be a part of the law of the land, and, in this sense, they are binding upon all the persons subject to the Governments entering into them, and must be obeyed both by the officers in their public actions and by the citizens in their private capacities.

Appointments and Removals. The President makes nominations to the Senate of all ambassadors and other public ministers, consuls, and judges of the Supreme Court, and all other officers of the United States, except Senators and members of Congress, unless there be express law authorizing some one else to appoint. In all important offices this appointment must be concurred in by two-thirds of the Senate. In case of such inferior officers as Congress may designate the appointment does not need confirmation by the Senate. Congress can lodge the power of appointment to inferior positions with the courts or the heads of Departments. All Federal offices of consequence are appointed by the President. The highest he selects for himself, usually in conference with the leaders of the political party by which he was elected.

The less important are filled on recommendation of members of Congress from the district in which the office is to be filled, or by political influence or standing.

This power of appointment, extending, as it does, throughout the whole United States, and to many offices in foreign countries, gives a patronage which is dangerous in the extreme to the purity and efficiency of the public service; but no better scheme has been devised, and as trust must be reposed somewhere the present plan will likely continue, modified by the doctrines and methods involved in the Civil Service and similar laws.

The President also fills all vacancies in the higher Federal offices except in Congress. There are a great many Federal offices of which the length of term is not fixed by law or expressly made to depend upon good behavior. In such cases it seems that the power to appoint carries the power to remove, and this gives still further power to the party in control of the Government.

Intercourse With Foreign Nations. The President is also the officer designated to receive Ambassadors and other Public Ministers. This, and his power to nominate the Representatives of this Government in foreign states, make him practically the medium of communication between the United States and all other Governments.

Military Powers. Beside the civil powers of the President, which we have just considered, "he is Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual service of the United States." Under ordinary conditions these responsibilities do not demand a large share of time or attention, but when there is war they become very onerous.

Powers in Connection With Legislation. These powers, including the President's initiative regarding legis-

lation and his veto power, have been discussed in the preceding chapter.

Impeachment. "The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."

An Impeachment is a charge made by the House of Representatives to the Senate accusing an officer of an offense.

All civil officers of the United States are subject to impeachment.

The offense charged must be treason, felony, or other high crime or misdemeanor.

The Senate sits as a court, and tries the officer on the accusation made by the House, and decides whether or not he is guilty. A two-thirds vote is required to convict the accused. The punishment is removal from the office then held, and disqualification for holding any other office of honor, trust or profit under the United States. This power has been exercised very rarely, and convictions have been still more infrequent.

Plan of Succession. Security against vacancy in the Presidential office by the death, inability, or resignation of the President is provided for in part by the establishment of the office of Vice President. This was as far as the scheme of succession was worked out in detail when the Constitution was adopted. But still it was foreseen that two vacancies might occur in the course of four years, and Congress is given power to provide for this by declaring what "officer shall then act as President." Congress has exercised this power, and the following cabinet officers in the order given, if they possess the necessary qualifications under the Constitution and have been appointed by the President and confirmed by

the Senate and are not under impeachment, shall act as President in case of death, removal, resignation, or inability of both the President and Vice President, viz.: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, and Secretary of the Interior. Congress has also provided for a special election for President under the conditions stated above.

RECAPITULATION.

The Executive power of the United States is declared by the Constitution to be vested in the President.

The President must execute the law, not his personal policies.

The Constitution provides for the election of a Vice President, who acts as President in case of the President's removal from office, or death, or resignation, or inability to act.

The President and Vice President are elected by electors. The people of each State have as many electors as it has members in both Houses in Congress. These electors meet at the Capitols of their respective States and each casts one ballot for President and one for Vice President. All these ballots are sent to the President of the Senate and counted by him in the presence of both Houses of Congress. If any person has a majority for either office he is elected. If no one is chosen for President a President is elected by the House. If no one is chosen for Vice President a Vice President is elected by the Senate.

The Cabinet is composed of the heads of the several Executive Departments. It is an advisory council, only, the ultimate responsibility in all matters resting on the President.

The pardoning power is in the President.

Treaties are made by the President with the concurrence of the Senate.

The President appoints all important Federal officers except members of Congress. In most instances the concurrence of the Senate is necessary. He has large powers as to removals.

The President is the head of the Foreign Diplomatic Service and conducts in person or through his subordinates all intercourse with foreign Nations.

The President is Commander-in-Chief of the Army and Navy of the United States.

The President is subject to impeachment by the House before the Senate for treason or other high crime or misdemeanor.

QUESTIONS.

I. 1. In whom is the executive power of the Federal Government vested? 2. Give in general the nature and scope of the President's authority. 3. Give in full the plan of election of the President and the Vice President. 4. State the nine branches of the Executive Department. 5. What constitutes the President's Cabinet, and what are its purpose and duties? 6. What is the order of succession to the office of President?

II. 1. Explain the President's pardoning power. 2. His power to make treaties. 3. His appointive and removal powers. 4. His control over intercourse with foreign Nations. 5. His military powers.

III. 1. Define impeachment, and explain the process employed in it.

CHAPTER XV.

JUDICIAL DEPARTMENT OF THE FEDERAL GOVERNMENT.

We found that the judicial department of a government is that which interprets its laws and applies them to

individuals. These are extremely important powers and duties. The agencies through which the government exercises these functions are called courts, and all of the courts of a government constitute its judicial system. In establishing such a system the sovereign determines what kinds of cases each class of courts may try. This right to try cases is called jurisdiction, and all the kinds of cases which any class of courts is authorized to try are said to be within the jurisdiction of those courts. A court in trying and deciding a case within its jurisdiction is exercising the powers of the sovereign creating it, and its decisions must be obeyed by everyone. If such decisions are not obeyed voluntarily, all the powers of the sovereign establishing the court will be put forth to enforce them. On the other hand, if the court should intentionally or by mistake undertake to try a case which was not within its jurisdiction, it would be acting without authority, and its decisions would be void. No one need obey it voluntarily, and there would be no power to force obedience.

Federal Judicial System. The Judicial Department of the Federal Government is established by Article III of the Constitution and several Amendments thereto and laws in pursuance thereof.

Article III, Constitution of the United States.

Section 1. The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases in law and equity arising under this Constitution; the laws of the United States and treaties made, or which shall be made, under their

authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming land under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as Congress may by law have directed.

The foregoing is the Judiciary Article of the Constitution, as originally adopted. It was objected that there were not restrictions enough around the judiciary, and several amendments to cure these defects were proposed and adopted, as follows:

Article IV. The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V. No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in the actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Article VI. In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Article VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

Article XI. The judicial powers of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

These Constitutional provisions, and acts of Congress passed in pursuance thereof, constitute the plan made by the people of the United States for exercising their judicial functions.

It is noticeable that only one court is provided for by name in the Constitution, and neither the number nor qualifications of judges for that court are given, and only two classes of cases are placed within its jurisdiction: those in which ambassadors, ministers, or consuls are to be affected, or in which a State is a party. As to all other matters Congress is left free to provide. This gives great elasticity to the system, and enables Congress to provide such courts and give them such jurisdiction within the limits of the powers of the Federal Government as the development of the country shall require. While this freedom exists as to the power to be conferred upon the different courts, there are several provisions in the Constitution which are quite restrictive as to the methods of procedure in the courts when cre-

ated. Thus, the differences between law and equity are recognized, and it is held that this recognition requires the continuance of the distinction; and that the references to trial by jury mean a jury of twelve men, according to the course of the common law, etc.

An analysis of the foregoing provisions shows that the judicial power of the Federal Government embraces, and is limited to, the following matters:

1. To all cases in law and equity arising under the Constitution and laws of the United States, and treaties made, or which shall be made, under its authority.

2. To all cases affecting ambassadors and other public ministers and consuls.

3. To all cases of admiralty and maritime jurisdiction.

4. To controversies to which the United States shall be a party.

5. To controversies between two or more States.

6. Between a State and citizens of another State.

7. Between citizens of different States.

8. Between citizens of the same State claiming lands under grants of different States.

9. Between a State, or citizens thereof, and foreign states, citizens, or subjects.

Congress has passed several judiciary acts since the foundation of the Government, each providing such inferior courts as the interests of the country seemed at the time to demand. The system now existing consists of the Supreme Court, provided by the Constitution, nine Circuit Courts of Appeals, a large number of Circuit Courts, a still larger number of District Courts, United States Commissioners, and a number of Courts of Claims of different designations, and courts for the District of Columbia.

Supreme Court. There is one United States Supreme

Court. It sits at Washington, D. C., and as now organized consists of nine judges, one, the presiding officer, called the Chief Justice, and eight Associate Justices. They are appointed by the President with the approval of the Senate. From the American point of view, and most probably in fact, it is the highest tribunal in the world.

It has both original and appellate jurisdiction. Its original jurisdiction is limited to cases "affecting ambassadors, other public ministers and consuls, and those in which a State is a party." Its appellate jurisdiction is much larger, and includes almost all cases which are tried in any other Federal court, and all cases tried in any State court in which a Federal question is raised. Cases raise a Federal question if either party claims some legal right under a law of the United States, and if such claim has been denied in the State court. It does not matter how small the amount of the claim may be, if it is made under the Constitution and the laws of the United States, and is denied, the one claiming it can take the case from the highest State court in which the case can be tried to the Supreme Court of the United States and have that court settle it. This is so in order that all questions which involve the Constitution or application of the Constitution of the United States may be brought before the Supreme Court, so that the same court will decide them all, and thus make the law the same throughout the Union.

Circuit Courts of Appeals. When the Government was organized and for a long time thereafter the Supreme Court could and did try all cases appealed from the lower Federal courts. Appeals became so numerous that one court could not dispose of them. Under the power given it in the Constitution Congress created a class of

courts known as the Circuit Courts of Appeals, with appellate jurisdiction only. There are nine of these courts, sitting at different places in the Union. Each is composed of three judges. Judges of the Supreme Court, circuit judges and district judges are all authorized to sit in these courts. There are a great many circuit and district judges, and they are so divided that there will be three judges present at each session of a Circuit Court of Appeals. It is required that at least one of the judges holding each session of the court shall be either a justice of the Supreme Court or a circuit judge. These courts have no original jurisdiction. They have appellate jurisdiction of all cases of importance tried in either the circuit or the district courts of the district in which the courts of appeals are held, respectively.

Circuit Courts. These are the highest Federal courts which have general original jurisdiction. Almost every case of importance tried in the Federal courts is either brought in one of these courts, or is brought in some State court and removed into one of these. These courts may be held by any Federal judge; that is, by a justice of the Supreme Court, or by a circuit judge, or by a district judge. Quite frequently two judges sit together.

These courts and many State courts have concurrent jurisdiction over many cases. In a great many such cases, if the suit is brought in a State court, it can be removed into the Federal court by filing a petition in the State court and a bond to carry the case into the Federal court. When these papers are filed in the State court that tribunal sends the case over to the Federal court to be tried there.

District Courts. The lowest trial courts in the Federal system are the District Courts. These have jurisdiction over some matters of importance, but most of the cases

tried by them are relatively small. They are usually held by Federal district judges, but sometimes by circuit judges.

Congress cannot give any Federal court the power to try any case which does not come within the scope of the judicial power of the United States as conferred in the Constitution, which was set out above. If it should attempt to do so, its action would be void.

Distinctions Between Law and Equity. The Federal Constitution recognizes and keeps alive the difference between common law and equity, and Congress in creating the several classes of courts and in fixing the procedure in them has observed these differences.

Those rights which were recognized by the ancient laws and customs from "the time when the memory of man runneth not to the contrary," or which have their origin in some act of Parliament, are common law rights. The remedies for the violation of these common law rights are called common law remedies, and the courts in which these common law rights are enforced and common law remedies are applied are common law courts. The procedure, that is, the method of conducting a suit in these common law courts is very ancient, very formal and logical. They are limited by strict rules as to the kinds of remedies which may be gotten, and as to the pleadings and evidence. All cases in them are tried by jury.

At a time much later than that at which the common law courts were established and their methods fixed rights were claimed which were of such nature that the common law would not recognize them, nor give any remedy for their violation. These claims would be brought to the king by petition. He would grant relief in some cases, but not in others. He said that he granted

or denied rights according to his conscience. Later he gave one of his officers, called his chancellor, the power to hear these cases. This chancellor would exercise the king's conscience and grant or refuse the requests as he thought the king's conscience would direct. He heard the petitions himself, without a jury, and gave such remedy as the case seemed to demand. As time passed and case after case came before the chancellor, rules for hearing and deciding them grew up. The courts held by the chancellor were courts of equity, and the rights enforced in them are called equitable rights. The rules for trying cases in them are the rules for procedure in equity, and the remedies they give are equitable remedies. The differences between these equitable rights, procedure, remedies, and courts, on the one hand, and the common law rights, procedure, remedies, and courts, on the other, are too technical and complex to be taken up here. They existed when the Constitution was written, and are recognized in it, and must be maintained in the Federal system until they are done away with by Constitutional amendment.

Federal Judges. All Federal Judges are appointed by the President with the approval of the Senate. They hold office for life, subject to removal by impeachment for cause, and receive such compensation as is fixed by law.

Concurrent Jurisdiction of the Federal and State Courts. When two or more courts have power under the law to try the same case, they are said to have concurrent jurisdiction over that case; that is, either one may try it, and its decisions will be final. If only one court, or courts of only one class, can try a case, the jurisdiction over the case is exclusive in such court or class of courts.

As to some cases, the jurisdiction of the Federal courts is exclusive of that of the State courts; that is, there are some kinds of cases which can be tried only in a Federal court. A case against a foreign ambassador is an example. No State court can try such a case.

As to some cases the jurisdiction of the State courts is exclusive of that of the Federal courts; that is, these cases can be tried in a State court, but not in a Federal court. An example of this is a suit between two men, living in the same State, over a tract of land in that State. There is no Federal court which has power to try such a case.

There are a great many cases in which the jurisdiction of the Federal and State courts is concurrent. These cases may be brought in either a United States or a State court. For example, if two men live in different States, and the one owes the other as much as \$2,000, the creditor can sue the debtor either in the proper State court or in the United States circuit court held in the district in which the debtor resides. Either of these courts has the power to try it.

Every judge, whether Federal or State, must obey the Constitution and laws of both the United States and of the State in which the court is held. Every State officer is sworn to support the Constitution of the United States and the laws made under it. This includes obedience and enforcement of obedience from others. Neither a Federal nor a State judge can disregard these laws. As the United States Constitution recognizes the right of the States to control and to make laws as to all matters not given over to the Federal Government in the Constitution, this binds the Federal judges to obey the laws of the State in which they are holding court, as far as they

do not conflict with the Federal Constitution and Statutes. In case of conflict between the Constitution and laws of the United States and an attempted State law, the latter must be ignored.

RECAPITULATION.

The judicial function of government is to interpret the law and apply it to individual cases.

In creating a judicial system, sovereignty divides its judicial power among different classes of courts.

The authority thus conferred upon a court is its jurisdiction.

Within its jurisdiction a court's action is valid and must be obeyed. Outside its jurisdiction its action is void.

The judicial power of the Federal Government is confined to those matters enumerated in the Federal Constitution.

All of this power has not been delegated to Federal courts.

The Supreme Court is the only one mentioned in the Constitution. Congress has power to complete the system.

The Supreme Court has but little original jurisdiction, most of its power being appellate.

Any case "involving a Federal question," whether tried in a State or Federal court, may be carried to the Supreme Court of the United States.

The Circuit Courts of Appeals are courts of large appellate powers, to which almost all cases tried in the circuit or district courts may be taken for revision.

Circuit Courts are the most important trial courts in the Federal system. They have jurisdiction of nearly all important civil suits and of most of the important criminal cases which can be tried in Federal courts.

District Courts are the lowest Federal courts.

The Constitution of the United States recognizes the distinction between law and equity, and all Federal courts must retain the two systems.

Federal judges are appointed by the President, and hold office for life.

In some cases the jurisdiction of the Federal courts is exclusive of those of the States. In other instances the jurisdiction of the State courts is exclusive of those of the Federal Government. Over most civil suits over which the Federal courts have jurisdiction, the State courts have concurrent jurisdiction.

QUESTIONS.

I. 1. What is meant by the judicial function of government? 2. Why do the people, in making a Constitution, provide for a number of different classes of courts? 3. Why is it that the decision of a court made within its jurisdiction must be obeyed?

II. 1. How can we ascertain the nature and extent of the judicial powers of the United States Government? 2. Name the different classes of courts in the Federal Judicial system, and give the jurisdiction of each. 3. By whom and under what authority are the Federal Courts created?

III. 1. What is meant by the distinction between law and equity? Does the Federal Constitution recognize this? 2. What is meant by concurrent jurisdiction between Federal and State courts? Are there any cases over which such jurisdiction exists? 3. What is meant by removing a case from the State to the Federal Courts? How is this done?

CHAPTER XVI.

RESTRICTIVE PROVISIONS OF THE FEDERAL CONSTITUTION.

There are many provisions in the Federal Constitution which are restrictive. Some of these limit the powers of

the Federal Government, some those of the State Governments, and some those of both. These restrictive provisions are in part for the benefit of the Federal Government or State Government, but the larger number of them are for the benefit of individuals. Taken together they are among the most valuable parts of the Constitution. They make very clear the distinction between a purely democratic government, in which the will of the majority is supreme, and a constitutional democracy, in which designated rights of the minority and of the individual are protected even against the will of the majority.

The restrictive articles and sections of the Constitution and its amendments are as follows:

Limitations on the Federal Government Only. First, in Constitution as originally adopted:

Section 9. [§ 1.] [The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.]

[§ 2.] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[§ 3.] No Bill of Attainder or ex post facto Law shall be passed.

[§ 4.] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[§ 5.] No Tax or Duty shall be laid on Articles exported from any State.

[§ 6.] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[§ 7.] No Money shall be drawn from the Treasury, but in Con-

sequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[§ 8.] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. Article II, Section 9, Clauses 1-8.

[§ 3.] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. Article VI, Section 3.

Articles in addition to and amendment to the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall

not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLES IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Consti-

tution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

[ARTICLE XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Limitations on the State Governments Only. First, those in Constitution as originally adopted:

Section 10. [§ 1.] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[§ 2.] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[§ 3.] No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Second, in Amendments:

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Congress shall have power to enforce this article by appropriate legislation.

Limitations Binding on Both:

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Before considering these in detail it may be well to observe that it is a general rule established and enforced by the United States Supreme Court that a restriction on the powers of Government contained in the Constitution does not apply to the State Governments, unless it is so stated in the Constitution itself. Hence Section 9, Article II, of the original Constitution, and Amendments

I to XI inclusive, are not restrictions on the powers of States, but only on the Federal Government. In order to restrict the powers of the States as to some of the matters covered by those limitations on the Federal Government the Fourteenth Amendment was adopted. This Amendment is not so broad as the aggregate restrictions on the Federal Government, hence a State may exercise some power from the exercise of which the Federal Government is prohibited. For example, a State, so far as the Federal Government is concerned, can abolish trial by jury in its courts, while an act of Congress attempting to deprive a man charged with crime of this right would be unconstitutional and void.

It will not be necessary to discuss separately each of the provisions which have been quoted. Some of the more important will be considered briefly, and in such order as is most convenient.

The first clause quoted relates to slavery and is not now of great consequence.

Habeas Corpus. The writ of Habeas Corpus is an ancient writ of common law by which any person unlawfully restrained by another can compel the one having him in custody to bring him before a judge or magistrate and let the cause of his detention be inquired into. If it is found that his confinement is lawful, he will be kept in custody. If it is not so found, he will be set at liberty. This writ, though not mentioned by name in the Magna Charta, is practically provided for in it. Even after the issuance of such a writ had come to be considered as a right in ordinary cases and under ordinary conditions, the officers of government frequently claimed the right to deny or suspend it in special cases under special conditions. It is to make the right to this writ clear and indisputable, and to provide when and

how it shall be suspended by the United States Government, that this clause was inserted. The privilege of this writ cannot be suspended by the United States authorities except in case of actual rebellion or invasion; in short, in case of actual war, and then only when required by the public safety. This clause has no application to the State Governments.

Bills of Attainder. Taking Article I, Sections 9 and 10, together, we find that both the Federal and State Governments are forbidden to pass *ex post facto* laws or Bills of Attainder. A bill of attainder is a law by which the government attempts to punish an individual without allowing him a trial in a court of law according to the prevailing usages.

Ex Post Facto Laws. An *Ex Post Facto* law is one that undertakes to make punishable as a crime an act or omission which was lawful when it occurred, or which undertakes to punish an act or omission which was criminal when it occurred more severely than by the punishment then provided, or which requires less proof to secure conviction of crime than was necessary when it occurred. Both the Federal Government and the States are forbidden to pass such laws.

Laws Impairing the Obligation of Contracts. This limitation does not apply to the Federal Government. Such laws may be passed by Congress if there be no other Constitutional objection to them. It does apply to all the State Governments. The obligation of a contract is the power which the person to whom a legal promise is made has to compel the one making him the promise to fulfill it, or make substantial and just compensation for failure to do so. A State can pass no law which impairs, that is, lessens, to any considerable extent, or destroys this

right of the promisee to the substantial benefit of his agreement.

Religious Rights. The First Amendment forbids Congress to pass any law respecting the establishment of religion or prohibiting the free use thereof. This statute does not apply to the States, but similar provisions are found in most, if not all, of the State Constitutions. The "establishment of a religion" is the selection by a government of some particular religion or denomination which shall be recognized by that government and compelling all the people to contribute to its support.

A free exercise of religion as here used means full and free expression and action upon such religious opinions as one sees fit, without accountability to the Government or anyone else therefor *as matter of religion*. It does not mean that an individual may do anything which is in itself harmful to the public or violative of the private rights of others and then claim immunity because he thought such an act his religious duty. If a man should conclude that it is his duty to offer up a human sacrifice to his god, and should seize upon another and kill him for that purpose, he could not protect himself from punishment by proving that he was obeying his religious creed. The law would say to him that his right to worship was not to be executed in such a way as to deprive his neighbor of his right to life, and would punish him accordingly.

Laws Abridging the Freedom of Speech or of the Press. Such laws are forbidden to be made by the United States. This does not mean that Congress cannot under any circumstances punish for harmful speaking or publication. Freedom of speech is not license of speech. It is not the privilege of publishing or saying whatever one may see fit, but is the privilege to speak whatever does not inter-

fere with the just and reasonable rights of others. If a man is a witness in a Federal court, his freedom of speech is so far limited by the law that if he wilfully and deliberately makes false statements in giving his testimony he can be sent to the penitentiary for perjury. The law against perjury is a reasonable regulation of the right of free speech, and not an abridgement of it.

The Second, the Third, and the Fourth Amendments relate to very important matters, but do not seem to need explanation.

The Fifth Amendment groups a great many most material provisions. The first guarantees to every person immunity from prosecution and punishment for any serious crime unless he has been indicted by a grand jury, or "presented" by a proper officer. A grand jury is a body of properly qualified men, selected by a court, sworn and charged to inquire into all violations of the criminal law committed within the district in which the court is held, and to make written charges in open court against all persons whom they believe to have been guilty of crime. Such a written charge properly made out and presented by a grand jury to a court is called an Indictment. This is now the almost universal way of charging a person with a serious crime. A Presentment is a written instrument, charging a person with the commission of a crime, not made by a grand jury, but by the prosecuting attorney representing the government in the trial of criminal cases in the court in which the presentment is made. It is made under the official oath of the officer filing it, and is based upon an affidavit of some one who knows the facts set out in the paper. This is quite a common form for prosecuting persons for small offenses; but, as stated, serious charges are almost always made by indictment. This restriction does not apply to prose-

cutions or charges for offenses committed by soldiers in time of war. They can be dealt with through the military officers in a more summary manner.

Former Jeopardy. To jeopardize is to put in danger. This provision against a second jeopardy for the same offense prevents one from being tried for an offense after he has been once duly charged with it before a court having the right to try him and the proceedings have gone so far that a jury has been empaneled and the accusation has been read and the accused has made his plea. These facts as a rule constitute "jeopardy," and protect from a second presentation. If, however, after the case has reached the stage indicated the accused agrees that it should be stopped and withdrawn from the jury, or if some fact which the law regards as sufficient excuse for stopping the case occurs, such as the adjournment of the court for the term before the case is decided, this will prevent the rule as to former jeopardy from applying.

Freedom From Compulsory Self-Incrimination. A person cannot be compelled to testify against himself in a criminal case in a Federal court, nor can he be compelled to give evidence in any case, civil or criminal, as to any fact which would subject him to criminal punishment.

Due Process of Law. This Amendment denies to the United States the power to deprive any person of his life, liberty or property "without due process of law." This has no effect on the States, but in the first section of the Fourteenth Amendment the same restriction in the same words is imposed on the States. Therefore, a consideration of the one is necessarily a consideration of the other. This is a "Magna Charta" right, and is of inestimable value. Volumes have been written on it. But the judges

and legislatures have declined to attempt to define it. In brief, "due process of law" means procedure according to the fundamental principles of right. It includes in all cases at least three things: First, the person whose right is to be judged of shall be informed of the fact that action is to be taken against him. He is entitled to this notice in sufficient time to allow him fair opportunity to prepare himself for trial. Second, he must be advised with reasonable certainty of the nature of the charge against him and the reasons given therein for proceeding against him. Third, he must have reasonable opportunity to be heard in the trial. Being heard includes both the opportunity of presenting testimony and of arguing the law and the facts and of the effect of these upon his rights. No method of procedure which omits any one of these can be due process of law.

Undelegated Powers Remain in the States and in the People. The Ninth and Tenth Amendments taken together declare expressly that the United States is a government of delegated powers, and that all political power not conferred upon it, nor denied to the States, remains in the States and the people. There are no clauses in the Constitution indicating more clearly the nature of the Federal Government and its relation to the States and the people than these. Language could not more clearly express the idea that the States preceded the Federal Government and formed it; that in so doing they delegated to the United States all those powers and those only which they desired that Government to have, and that those which are not delegated are still in the States and the people. They positively contradict and disprove those statements, now becoming somewhat frequent, that the States came into existence at the same time as the United States, and that

the United States delegated certain powers to the States, and reserved others to itself.

The language of the Supreme Court in construing the Constitution is equally explicit. In *Gibbons v. Ogden*, decided in 1824, Chief Justice Marshall, speaking for the Court, says: "As preliminary to the very able discussions of the Constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of the States anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. *This is true.* But when these allied sovereigns converted their league into a government; when they converted their ambassadors deputed to deliberate upon common courses and to recommend measures of general utility into a legislature empowered to enact laws upon the most interesting subjects, the whole character in which the States appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected. This instrument contains an enumeration of the powers expressly granted by the people to their government." The language of the Constitution and of such opinions as that from which the above quotation was made, and there are many of them, positively disprove those statements that the States came into existence at the same time as the Federal Government and that the United States delegated certain powers to the States and reserved others to itself, and establish the fact that the people of the States, and the States as independent sovereignties, existed before the Constitution was formed and adopted; that in adopting that Constitution the States and the people of the States delegated to the United States such

powers as they saw fit to part with and to confer upon it; that all political power not so delegated to the United States remain in the States and the people of the States, and that the only proper means of ascertaining what powers are delegated on the one hand and reserved on the other is by a fair and true construction of the Constitution.

Equal Protection of the Laws. The Fourteenth Amendment prohibits the States from denying to anyone equal protection of its laws. There is no similar restriction on the Federal Government. The effect of this provision is to prevent a State from making unjust discriminations between different individuals or classes; that is, discriminations which are purely arbitrary and that have no basis in real differences in the persons or classes between whom the discriminations are made. The State can deal differently with different classes between whom real distinctions exist, adapting the law in each instance to the actual conditions of the class to be affected. The language of the Fourteenth Amendment should be studied with especial care. Shortly after its adoption Congress considered it to be not only a limitation on the powers of the States, but a positive grant of authority to the Federal Government, and hence passed the legislation known as "The Civil Rights Acts." In those acts it undertook to protect certain classes of citizens in social rights. The validity of these acts was questioned on the ground that the Fourteenth Amendment was not a grant of power to Congress to legislate directly regarding the privileges and rights of citizens, but the extent to which it operated was to prevent legislation by any State adverse to such rights and privileges. The United States Supreme Court took this view, and "The Civil Rights Acts" were held unconstitutional.

Thus it was decided that Congress cannot regulate civil rights by reason of authority derived from this Amendment. Such regulation is entirely with the States, but in doing this the States must observe and act within the limitations imposed upon them by this Amendment. The words "privileges and immunities" used in this Amendment are important. They are the same words which occur in Clause 1, Section 2, Article IV, of the Constitution. The effect of these provisions are considered in the next chapter, and need not be dwelt on here.

Thirteenth and Fifteenth Amendments. These Amendments followed the Civil War, and record one of its many consequences, the freeing of the negro. They are limitations on both the power of the State and Federal Governments. Neither Congress nor a State Legislature can pass any act which would validate or legalize slavery. Nor can either of them or the people of any State by Constitutional provision make any valid law which disfranchises any person because of his race, or color, or previous condition of servitude. These Amendments do not prevent the States from passing laws fixing qualifications for voting on any other grounds than those mentioned in the Amendment, nor is it a valid objection to such laws that the qualifications will disfranchise a larger proportion of one race or color than of another. So long as the real basis of the qualification is other than race, color, or servitude it is good.

For example, if in any community there are two races, and a larger proportion of one is educated than of the other, it is not unlawful to fix an educational qualification for voting, although it is known that it will exclude more of the one race than of the other. The same is true as to property qualifications, or any other not

based on race, color, or previous servitude. This is the only prohibition in the United States Constitution on the power and rights of an individual State to control suffrage within its borders. The second section of the Fourteenth Amendment gives to Congress the right to exclude from the computation in determining the number of representatives from a State all adult male persons who are disfranchised, unless the disfranchisement is on account of crime; but this would not affect the validity of the State law by which the disfranchisement was accomplished.

While the Fifteenth Amendment is broad enough to include the United States Government, it really is of little consequence in that connection, because that Government has no Constitutional power to fix the qualifications of voters.

RECAPITULATION.

Restrictive provisions in the Federal Constitution are important as protecting the rights of the minority and of individuals.

Such provisions do not apply to the States except when so declared.

The right to the writ of habeas corpus cannot be suspended by the Federal Government except in case of actual rebellion or invasion, and then only when necessary to the public safety.

Neither Congress nor a State Government can pass bills of attainder or *ex post facto* laws.

Congress can pass laws impairing the obligation of contracts, but the States cannot.

Congress cannot establish a religion or prohibit the free exercise of one's religious opinions. It may prevent invasion of the rights of others done under the guise of

religious worship, if the right protected is within the jurisdiction of the Federal Government.

Congress cannot abridge freedom of speech or of the press. This guarantees liberty, but not license, in the expression of ideas.

No one can be tried on a serious criminal charge in a Federal court except upon indictment by a grand jury, or upon presentment by a prosecuting officer.

No one can be tried for an offense in a Federal court after he has been acquitted, or convicted and punished, or put in jeopardy therefor.

No one can be compelled in a Federal court to give evidence which tends to convict him of a criminal offense.

Neither the Federal nor a State Government can deprive anyone of life, liberty, or property except by due process of law. Due process of law includes information as to the charge made against one, and the opportunity to defend one's rights.

A State Government cannot deny to anyone equal protection of the law. This prevents unfair class legislation.

The United States is a government of delegated powers, and all powers not delegated to it remain in the States and the people.

No one can be denied the right to vote by either the Federal or a State Government on account of race, color, or previous condition of servitude.

Slavery is forbidden within the United States.

The Fourteenth Amendment is not a grant of power to Congress, but a restriction upon the States.

QUESTIONS.

I. 1. What is meant by restrictive provisions in a constitution, and what is their purpose? 2. Enumerate the provisions in the Constitution of the United States, which deny power to

the Federal Government alone. To the States alone. To both Governments. 3. When do restrictions in the Constitution of the United States apply to the States?

II. 1. What is the purpose of the writ of habeas corpus? 2. When may the right to such writ be suspended by the Federal Government?

III. 1. What is a bill of attainder? 2. What are *ex post facto* laws?

IV. 1. What is a law impairing the obligation of a contract? 2. Which Government is forbidden to pass such laws?

V. 1. What prohibitions exist in the Federal Constitution against the violation of religious rights? 2. What is meant by abridging freedom of speech and of the press?

VI. 1. What is the general meaning and effect of the Ninth and Tenth Amendments? 2. What kind of legislation by the States is forbidden by the Fourteenth Amendment? 3. Is this Amendment a grant of power to Congress, or a limitation on the powers of the States only?

VII. 1. Can Congress pass a law legalizing slavery? Give reasons. 2. What is the only restriction in the Federal Constitution on a State's right to disfranchise voters? 3. On what account can Congress reduce the representation of a State in Congress?

CHAPTER XVII.

GUARANTEES IN THE FEDERAL CONSTITUTION TO THE STATES, AND TO THE CITIZENS OF THE STATES AND OF THE UNITED STATES.

General. The limitations on the Federal Government which were discussed in the preceding chapters are really guarantees both to the States and to their citizens; and the limitations on the State and on the Federal Governments are also guarantees to the citizens of the States. These limitations must always be kept in mind.

In addition to these there are a number of direct and

positive guarantees in the Constitution which are worthy of separate consideration.

Guarantees to the States. "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence." Article IV, Section 4, Constitution of United States.

"No tax or duty shall be laid on articles exported from any State."

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another." Article 1, Section 9, Clauses 5 and 6, Constitution of the United States.

The most emphatic guarantees by the National Government to the States are found in the fourth section of Article IV of the Constitution as quoted above. First, it promises a republican form of government; second, protection from invasion; third, protection from domestic violence, when it is requested by the Legislature of the State, or by the Governor when the Legislature cannot be convened.

Republican Form of Government. The States had been republican from their foundation. The colonists had become fully satisfied that monarchical government was not desirable. Accordingly in entering into the Union and parting with so many of their sovereign powers they received the guarantee that they should each retain a republican form of government.

Doubtless this means that each State should forever

be protected in its choice of a representative democratic government; a government wherein sovereignty over the political matters not given over to the United States should remain in the people of the States, and should be exercised by them directly in organizing their State Government, and in the election of their principal officers, but indirectly through their chosen representatives in ordinary governmental affairs. It may be that it goes further and includes a substantial separation of the State Governments into the three great departments: Legislative, Executive, and Judicial. This, however, is not clear. There has been but little occasion to construe this guarantee, and its meaning has not been authoritatively determined.

Guarantee Against Invasion. The States in forming the Union surrendered their right to enter into treaties or compact with each other or with foreign nations, or to keep standing armies, or to engage in war on their own initiative, except in case of actual invasion, or such imminent danger as would not admit of delay. It was but natural and just that the government to which they had given over these powers should pledge itself to use them in their protection in case of need. Invasion is the actual entry upon the territory of a state by persons bearing arms for a foreign government in a hostile manner, or for a hostile purpose. Every entry by persons acting and representing a foreign government is *prima facie* hostile, and hence all such entries are forbidden under the law of nations. The States have the right to repel any such invasion on their own account, and are not under obligation to first call upon the Federal Government. It may be well frequently to do so, although direct initiative by the State in such cases would not violate the Constitution.

Even though there be no actual invasion, if any foreign nation is committing a hostile act which puts the State "in such imminent danger as will not admit of delay," the State may protect itself.

In every case of action by the State under either of the contingencies mentioned it should immediately communicate with the officers of the Federal Government, and the conduct of the war should be given over to it at the earliest practicable time.

Guarantees of Aid in Case of Domestic Violence. As the States retained control of their domestic affairs, and of the means which enable them to control such matters under ordinary conditions, it was not necessary to obtain from the Federal Government an unqualified guarantee of domestic tranquility. The States, however, did give up many of the sources of revenue which they had possessed as unitary states, and also the right to maintain standing armies. The loss of these powers necessarily weakens the States to some extent, even in dealing with internal disturbances. It was, therefore, well to make provision for aid from the Federal Government in case it should become desirable. But to give to the Federal Government the right on its own suggestion to take part in the domestic affairs of a State might be made a pretext, or at least afford the opportunity, for unnecessary interference. Hence we find that the right and duty to protect the State in this class of cases is not an absolute one, as in the two preceding, but arises only when called for by the proper State officers. The power to apply for such aid in behalf of the State is given primarily to the Legislature, because it is the authority most directly representative of the people, and is most likely to reflect the desire and sentiment of the majority;

but if the Legislature cannot be convened, the Governor may make the application.

Guarantee Against Export Taxes. The States surrender their power to levy taxes of any kind on foreign commerce, except by consent of Congress. They retained the power to collect such taxes from foreign vessels as are necessary to defray the expense of executing the inspection laws, but this cannot be regarded as a power to tax for purposes of revenue. In return they received from the Federal Government the guarantee that "no tax or duty shall be laid on articles exported from any State." This clause and the limitations on the States' power to tax contained in Section 10 of the same Article relieve all persons shipping commodities from the United States from all export duties.

Guarantees as to Regulating Commerce and Revenue. By the sixth clause of Section 9, Article I of the Constitution, the United States Government is forbidden to give any preference to the ports of one State over those of another, or to levy any charges on the coast-wise trade. These provisions are practical guarantees against any discrimination between the States by the Federal Government in the exercise of the powers given it over international and interstate commerce. This is a wise and just precaution which commends itself to all.

Relations of the States to Each Other—Public Records. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." Article IV, Section 1, Constitution of the United States.

This clause secures to each State and its citizens the right to rely upon and get the benefit of "the public

acts, records, and judicial proceedings of every other State." It does not require the officers of one State to take official notice of the acts and proceedings of other States, as they are required in some instances to do with regard to those of their own State. But it does entitle those who are interested in such matters to make proper proof of them before the officers of other States, and compels such officers to give to them due credit and effect when proved.

To entitle such "acts, records, and judicial proceedings" to recognition they must be really public; that is, acts performed, records made and kept, or proceedings had in courts having competent jurisdiction. Hence, before a person can receive any practical benefit from this provision he must prove the public and official nature of the action on which he relies.

Extradition of Criminals. "A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime." Article IV, Section 2, Clause 2.

The purpose of this clause is to prevent fugitives from justice from one State from finding asylums of safety in another. The process is indicated in the provision itself. It is called extradition. The first requirement to entitle the Governor of one State to extradite a person from another is that such person be charged with treason, felony, or other crime. The charge must be made in some way recognized as "due process of law," usually by indictment of a grand jury, though this is not necessary. The accusation must be of a criminal nature. The only offense named is "treason," but any act which is

a violation of a criminal law is included. Trivial misdemeanors are not usually made the subject of extradition. "The party must flee from justice and be found in another State." Usually the crime for which extradition is sought is committed within the territory of the State whose Governor makes the application, and the person sought has left that State to avoid arrest. In such case he has fled, not only from justice, but from the State as well, and there is no difficulty in declaring such an one a fugitive from justice. If he committed a crime within a State and has subsequently left it, though not for the purpose of escaping punishment, he is still held to have fled.

There are a few crimes which can be committed against the laws of one State by a person within the territory of another. For example, a man in Missouri forges a deed to land in Texas. The act of forgery is the crime, but the land the title to which is affected is in Texas. Texas has power to protect the title to lands within her borders. To do this she makes forging titles to such lands a crime, no matter where committed. The man in Missouri has committed a crime against Texas law, and is indicted for it in Texas. If he can be found in Texas he can be tried and punished, but he is not held to have fled from justice and cannot be extradited.

The purpose of this clause is to enable the Governor of a State, against whose laws a crime has been committed by one within the State but who is out of the State at the time he is sought for arrest, to bring the person back into the State to be tried.

The Governor of the State where the accusation is pending makes application to the Governor of the State where the accused is, requesting the arrest and surrender of the accused to a representative of the State making the

application. This application is called a requisition. While the language of the Constitution seems imperative, still the Governor upon whom the requisition is made must decide whether the conditions exist which make the provisions applicable. Ordinarily requisitions are granted, if they are in due form, and accompanied by the proper proof of the facts; but they may be denied. This is frequently done when the Governor thinks that the return of the accused is not sought in the interests of justice and law. If the requisition is honored, the accused is surrendered to the representative of the State seeking him, and is carried back for trial.

Guarantees as to New States. "1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned, as well as the Congress." Article IV, Section 3, Constitution of the United States.

This does not seem to need exposition, but is quite important.

Privileges and Immunities of Citizens Within Other States. "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Article IV, Section 2, Clause 1, Constitution of the United States.

Section 1 of the Fourteenth Amendment among other things provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." These clauses should be construed together. The first is an affirmative guarantee to citizens of the several States against abridgment by either the Federal or State Governments of privileges

or immunities to which they are entitled as such citizens. The second is a limitation on State action only, and is for the benefit of citizens of the United States, as such. These differences must be kept in mind.

The words "privileges" and "immunities" have the same meaning in the two clauses. They signify rights to life, liberty, and property, and to the equal protection of the laws; but they do not include political rights, such as voting, or holding office. As every citizen of a State is necessarily a citizen of the United States, both clauses apply to and protect all such citizens. There are citizens of the United States who are not citizens of any State, as residents in the District of Columbia, or in a Territory. These are protected by the latter clause, but not by the former.

Corporations are not citizens, either of the United States or of a State, within the meaning of these clauses, and hence can claim no protection under them.

RECAPITULATION.

The United States gives to each State the following guarantees: A republican form of government, protection from invasion, and, on proper application, from insurrection, against export taxes, against discrimination in regulation of commerce, or charges on coast-wise trade.

Each State is guaranteed that its public records shall have full faith and credit in every other State.

The Constitution provides for the extradition of criminals from one State to another.

New States may be formed, but no new State shall be created within an old one, nor two old ones combined without the consent of the States to be affected.

Every citizen of each State is entitled to all the "priv-

ileges and immunities" in every other State that the citizens of the latter State enjoy.

No State can pass or enforce any law which abridges the privileges of citizens of the United States.

"Privileges and immunities," as used in the two preceding statements, do not include political rights or privileges.

Corporations are not citizens either of the States or of the United States, within the preceding statements.

QUESTIONS.

I. 1. What direct guarantees are given in the Federal Constitution to the States? 2. What to citizens?

II. 1. Why is the promise of a Republican form of government so important?

III. 1. Has a State the right to protect itself from invasion, and what part should the Federal Government take in such protection?

IV. 1. The loss of what powers by the States made it necessary for the Federal Government to guarantee to them aid in case of domestic violence?

V. 1. By whom is such application for aid made?

VI. 1. Explain the guarantee against export taxes, and those regulating commerce and revenues.

VII. 1. Explain the importance of the guarantee concerning the public records.

VIII. 1. What is extradition? 2. Explain the process employed in it, and its importance. 3. Under what condition is a man said to have fled from a State and from justice?

IX. 1. Explain the guarantee given as to new States.

X. 1. What privileges and immunities has a citizen of one State within another, under Clause 1, Section 2, Article IV, of the Constitution? 2. Can citizens of the United States who are not citizens of any separate State claim this guarantee? 3. Does this guarantee and that in the Fourteenth Amendment apply to corporations?

THOUGHT QUESTIONS FOR REVIEW.

1. What is meant by the States being unitary states before the adoption of the Constitution of the United States.
2. What is meant by the United States being a Federal State?
3. How are the powers which the States surrendered to the United States ascertained?
4. Why may every case involving a Federal question be carried to the Supreme Court of the United States for decision?
5. Why is it necessary for every government to have a legislative department?
6. Why does each State have the same number of Senators but a different number of Representatives?
7. Give the general characteristics of the powers of the United States.
8. Under what circumstances are implied powers recognized as existing in the United States?
9. How is the President elected? How is it that the candidate for President who has the smaller popular vote may still be legally elected by the votes of the electoral college?
10. How can the creation and maintenance of the President's Cabinet be justified under the Constitution?
11. Why was the President given the power to pardon, and what should govern him in its exercise?
12. Why is it necessary to have Federal courts? Why were Circuit Courts of Appeals created by Congress?
13. What is the purpose of placing restrictive provisions in the Federal Constitution? Why are such provisions not applicable to the States unless this is expressly so stated? Why is it desirable to place some restrictions on the States in the Federal Constitution?
14. Why does the Constitution give an absolute guaranty to the States as to invasion, and only a conditional one as to domestic violence?
15. Why are the powers of the Legislative and Executive Departments of the Federal and of the State Governments in a great degree exclusive of each other, while a large share of the Judicial powers of the two Governments are concurrent?

PART FOUR

GOVERNMENT OF THE STATES, WITH PARTICULAR REFERENCE TO TEXAS.

CHAPTER XVIII.

THE STATE GOVERNMENTS.

Brief Resume. We have found that each of the thirteen States which formed the United States of America began its political existence as a separate colony, planted by English subjects under the protection of the British Crown, and owing to that Crown political allegiance. There was no organized connection between these. Each was politically distinct from every other. There existed between them, however, the ties of common race and social conditions, of common tradition and religion, and, perhaps more powerful than all of these, of common difficulties and dangers. When planted here they were dependent largely upon the Mother Country for supplies, and for protection from the Indians and from European nations. As they increased in population and developed their resources they became more independent. The Mother Country had been at considerable expense in founding these colonies, and it was but natural that as they grew she should seek to reimburse herself for her expenditures, and thus prove the value of the colonies as sources of revenue. It was natural also that the King's Parliament should not draw very sharply the line between just return and additional financial contribution, and since England was practically impartial in its treatment of the colonies, in its exactions from them, and in the

manner of their enforcement, the grievances and dangers of one colony were the grievances and dangers of all.

For this reason the separate colonies united in declaring their independence of Great Britain, and in maintaining such independence on the battlefield. They were successful in their common enterprise, and the rebellion of the colonies was by that success changed into the Revolution of the States. They then united in the Confederation, each still retaining its sovereignty unimpaired, and later entered into the Federal State which still continues as The United States of America.

Admission of New States. The Federal Constitution provides for the admission of new States. Under this power thirty-three States have been received, thus increasing the number to forty-six. Thirty-one of these came into the Union by the establishment of Territorial Governments by Congress, and by the subsequent change of these by the people into States with the approval and concurrence of the Federal Government. One, West Virginia, was created by Congress out of a portion of the domain of Virginia, with the co-operation of the inhabitants of the new State, but without the consent of Virginia. Another, Texas, came in by annexation, effected by treaty between the United States and the Republic of Texas.

Status of New States. We have also found that as each State is admitted into the Union it takes the same political position as each of the other States, so that its powers, rights, duties, and status are identical with those of the older ones.

Jurisdiction of the States. The Federal Constitution grants to the United States Government control over all international and interstate matters, and over many other matters of such nature as to make uniformity of rule es-

sential to the general well-being of the people of the whole Union. All purely local and domestic matters are left to the States, and these are of the greatest possible concern and importance. The protection of the life, liberty and property of the citizen is very largely in the hands of the States. If a man is murdered, the murderer is tried and punished by the State. If he is wrongfully put in prison, in almost all instances he must apply to the State authorities for release. If his property is taken or injured, he must, except in a very few cases, look to the State courts for redress. There are circumstances under which the Federal Government has jurisdiction over cases of each of the kinds mentioned, but these are rare. Therefore, important as the Federal Government is, and beneficial as its action may be within its jurisdiction, it is far from constituting the whole of our Governmental institutions. The Government of the United States and that of the separate States mutually support and supplement one another. Each without the other would lack efficiency. Taken together they possess and exercise all the functions of a unitary state, and constitute the best form of government which the world has ever known.

Political Subdivisions of a State. As each State has control over all of its domestic affairs it owes the duty of providing means and agencies for local government. It would be extremely inconvenient to have all the courts for the trial of cases in a State held at one place. The hardships upon parties to suits, and on witnesses and jurors, would be intolerable. It would be equally inconvenient to have all the public records kept, and all taxes assessed and paid, at one place. This is equally true of a great many other matters. Again, it is the duty of the Government to make and maintain good high-

ways over which the people can go and come as their business and pleasure may demand. If, however, all public highways were absolutely under the control of one State officer, there might be great discrimination and injustice. To obviate these difficulties the State divides its territory into convenient subdivisions, conferring upon each such powers as the interests of the particular locality may require, so far as this can be done without interference with the general good of the whole State. The State gives to these subdivisions such names as it sees fit, makes such provision as to the exercise of the powers conferred, and charges it with such duties as the general good requires.

Counties. In the great majority of the States the most important of these subdivisions are called Counties. In Louisiana they are Parishes. The name County is of English origin, and indicates the territory assigned to a count. In England it was usually composed of smaller subdivisions known as Towns and Hundreds. It is customary in the United States to divide Counties into lesser districts, having different names in different States.

The County is a very important factor in our form of government. It is a subdivision made largely for convenience in the administration of State affairs and in enforcing State laws. It has but little political power conferred upon it for its own benefit.

In each County there is established a County-Seat, where courts are held, public records kept, and where all county officers have their offices. To these county officers all matters pertaining only to their particular community, and all such State matters as are capable of subdivision and effective local control, are given over. The laws which govern all the county activities are State laws. The courts administer the laws of the State

and of the United States. The records are kept by authority of and in conformity to State laws. The public roads are laid out and worked as the State laws direct. The same is true of the whole catalogue of affairs attended to through county officers.

Organization of Counties. Counties are created by or under Legislative authority. No community can without such authority organize itself into or assume functions belonging to a county. The usual method employed in organizing counties is for the Legislature to divide the territory of the State into convenient districts with well defined boundaries. The inhabitants within each select a county-seat, elect proper county officers, and report these facts to a designated representative of the State. When such organization is recognized by the officers acting for the State the county enters upon its life as such.

County Officers. In each county there are a number of officers elected whose duties are mainly executive and judicial. The usual county officers and their duties are as follows: A County Judge, who presides over the Tax Assessor, who assesses taxes on persons and probate matters. A Sheriff, who is the chief executive officer, and who keeps peace in the county and carries out the orders of the Governor and of the courts. A Tax Assessor, who assesses all taxes on persons and property within the county for both State and county purposes. A Tax Collector, who collects the taxes for the State and county, and pays the money to the proper receiving officer of each. A County Treasurer, who receives, cares for and pays out the county money. A County Clerk, who keeps the records of the county courts and those which relate to lands and other property, births and marriages, etc. A School Superintendent, who has

general charge over the public schools of the county, and a County Surveyor, who surveys public lands and public roads, etc. These are the officers usually provided for by law, but the people, either in their Constitution or through the Legislature, can add such others or leave off such of these as they see fit.

Political Districts. It is necessary for some purposes, principally for the election of different kinds of officers, to have State political subdivisions larger than counties. These are formed by combining as many contiguous counties as may be necessary to make a required size. These combinations are made for the election of legislative or judicial officers. To illustrate: A State will have a great many more counties than it has members of either branch of the Legislature. It determines how many inhabitants are entitled collectively to one Representative, and puts into one Representative District a sufficient number of contiguous counties to make this required number. If a single county should have many more inhabitants than entitle it to one Representative, it is given two or more, as the case may be. The same is true in the election of State Senators, and Representatives in Congress, and of certain judicial officers.

Subdivisions of Counties. In most of the States the county precedes its subdivisions; that is, the county is created, and then divided by the county officers into the number of precincts for which the law provides. These precincts are the smallest of the political subdivisions of a State, and are made for different purposes.

Justices Precincts. Each county is divided into several precincts, known usually as Justices Precincts, in each of which a trial court for small cases is maintained. The presiding officer of these courts is a Justice of the

Peace, and the executive officer is called a Constable. These courts are a great convenience to the people, as they afford convenient, inexpensive and reasonably speedy means for settling the lesser disputes which arise in a neighborhood.

Voting Precincts. The number and size of the Voting Precincts in each county are usually left to the discretion of the County Board, or Commissioners Court, as that body is sometimes called. In each of these a polling or voting place is established where the inhabitants of the precinct, who are legally qualified, cast their votes. It is within these precincts that the primary elections, or precinct conventions of political parties, are held.

Towns or Townships. In some of the Northern and Eastern States the county is not the most important subdivision of the State. Into these States the English Town or Township was transplanted and its characteristics emphasized. It is the best illustration of local self-government which the United States furnishes. In it all strictly local matters are attended to in the Town meeting by the voters themselves. In this meeting every voter in the Town has an equal voice and an equal vote. Here they determine for themselves the local taxes, provide for the laying out and keeping up of the Town roads, and for all similar local matters. The voters meet once a year for these purposes; and at such meetings the different Town officers are elected, who carry on the township affairs until the next annual meeting selects their successors. Boston maintained its township government until 1822, when it changed to the city form of government. Before this change was made the Town had over 40,000 inhabitants. Brookline, one of the suburban towns adjoining Boston, still maintains this ancient form of government, and refuses to be incorporated

as a city, even though it counts its inhabitants by thousands, and is the richest community *per capita* in the United States. In those States in which the township exists counties are formed by combining townships, but they are not so important as in the States formerly considered.

Cities and Towns. The word "town" has here a meaning different from that in the case of New England towns or townships. Experience demonstrates that, for both business and social purposes, people will congregate in large numbers within small spaces. This massing of population creates the necessity for better and special means of protecting private rights and supplying public needs. Better highways, better sanitation and better protection against fire and against crime, larger and better facilities for water and light and transportation, and many other matters equally important and yet local in their nature, require additional organization of the community in which these needs exist. Such organization is secured by the incorporation of these thickly-settled districts into new political units, known as Cities or Towns. These corporations, while public and governmental, are still more for local than for general purposes; and tend more to the special convenience, advantage and protection of the inhabitants of the designated territory than of those of the State at large; and the powers conferred and duties and liabilities imposed are made to correspond to these conditions. As a rule, only a small share of the general powers of government are included in those granted; those which are so granted being for local benefit.

Methods of Chartering Cities and Towns. There are two general methods of creating such corporations: first, by the passage of general laws providing for their

creation, specifying how the corporation shall be effected, the powers to be possessed by it and the duties and liabilities to which it is subject, and authorizing the inhabitants of any district or locality having the legal requirements set out in the act to combine themselves into such corporation. The second method is by direct or special act of the Legislature creating the particular town or city.

Powers and Duties. In whichever way any town or city is created it has such powers and is subject to such responsibilities as its creative act or charter, whether general or special, interpreted and construed according to legal rules, shall specify. The scheme of government for such corporations is local. The officers consist of a chief executive, known as a Mayor; of taxing officers; of officers charged with the duty of keeping public records; of others charged with the duty of keeping public funds; of a city board, known as Councilmen or Aldermen; of officers having local judicial authority; and of police officers and commissioners for various purposes, whose duties usually relate to some public utility. The legislative power of the corporation, so far as it is invested with such power, is conferred upon its Board of Aldermen, or Council. Their legislative acts are local, and are supplementary to the general laws of the State. The judicial officers of the city are usually restricted in their jurisdiction to the enforcement of city ordinances and State laws against petty misdemeanors. The selection of the several officers is usually entrusted to the people of the city directly by election, or indirectly by appointment by the elective officers. Whether or not this right of local self-government may be regulated, modified, or taken away by the Legislature of the State, either in original acts of incorporation or in amendments

to charters, and, if so, in what way and to what extent, are interesting and unsettled questions. The courts of different States have differed with regard to them. In Texas the question has recently been raised as to the power of the Legislature to authorize the Governor to appoint Commissioners to exercise many of the most important powers of the government of the City of Galveston. Our two courts of last resort have come to directly opposite conclusions on the subject; the Court of Criminal Appeals holding that criminal ordinances passed by such Commissioners or by a Board or Council of which they were members, are void, and the Supreme Court holding that civil ordinances, or action taken in civil matters, by the same Board with the same constituents, are valid.

Taxation. A State has the power to tax every person or thing subject to its jurisdiction, unless it is prohibited from doing so by the Federal Constitution.

That instrument, as we have seen, forbids the States to lay imposts on imports or exports for revenue purposes, or to lay any duty on tonnage. The States cannot tax the agencies through which the Federal Government is performing its duties, nor can they tax interstate commerce, as neither of these is within the State's jurisdiction. However, it can tax property within its territory used in such commerce. The application of these doctrines is often hard to make, but the doctrines themselves are well established.

Eminent Domain. The State has the power of eminent domain, and can exercise it for its own benefit, for the benefit of its political subdivisions, or for that of persons or corporations engaged in public enterprises, such as operating railroads, waterworks, telegraph or telephones, and similar public utilities.

Police Power. Each State retains its police power in full force as to internal affairs. Under this it has authority to take such action as may be necessary to protect its inhabitants in their health, morals, or safety. A very interesting case involving the nature and exercise of this power occurred some years ago in Mississippi. The Legislature for a certain sum of money paid to the State, and for a share in the proceeds of the enterprise, chartered a Lottery Company. The Company organized, made the cash payment, and began operations. For some years it continued, taking in large sums annually, and paying over to the State its share. Later the people of Mississippi concluded that lotteries were immoral, and had the law chartering this one repealed. The Company resisted the repeal on the ground that its charter was a contract, and that the State was forbidden to take any action impairing the obligation of contracts. The trial court upheld the repealing act, on the ground that a lottery is immoral, and that a State cannot by agreement deprive itself of the power to forbid it in the protection of the morals of the people. The Supreme Court of the United States affirmed this decision. In other words, the Supreme Court of the United States holds that the police power of the State is a solemn trust which cannot be bargained away by a Legislature in such way that that Legislature or any of its successors cannot recall and exercise it; and, as the morals of the people are injured by a lottery, the latter cannot be protected by contract with the State.

RECAPITULATION.

The Federal Constitution provides for the admission of new States into the Union.

Under this thirty-three States have been admitted;

thirty-one were first Territories, and one, West Virginia, was created out of territory formerly belonging to Virginia. Texas was annexed.

New States take and retain status identical with that of the original States.

The respective States have jurisdiction over all local and domestic matters, and by their sovereignty protect the larger share of the rights of individuals.

The Federal and State Governments are supplementary; neither is adequate for complete government.

The State is the political unit in our American Governmental institutions. The United States are formed by their Union. The various smaller political districts are formed by their subdivision.

Each State makes such subdivisions of its territory and confers upon each such parts and so much of its political power as it sees fit.

The most frequent and important subdivision of a State is a county. Counties are formed for convenience in enforcing State laws by localizing the exercise of the State's executive and judicial powers. Counties have practically no legislative powers. There are numerous officers selected from the citizens of each county to exercise these powers. They are usually a county judge, a sheriff, a clerk, a tax assessor, a tax collector, a treasurer, a school superintendent, and a county surveyor.

Political districts for electing officers are frequently formed by combining several counties.

Counties are again subdivided into precincts for various purposes connected with the Government.

The justice's precinct is the smallest subdivision of the State for judicial purposes. A justice's court is maintained in each such precinct. Voting precincts are

also made. All qualified voters within the same voting precinct vote at the same place.

In the New England States the primary political subdivision of the State is into townships or towns, as they are frequently called. These are then combined into counties. These townships are fine representatives of local self-government by direct action of the people. Police powers and methods of procedure are subject to the control of the State.

The growth of a community and the increase of its population renders necessary additional local governmental activities. These are provided by incorporating cities and towns, and giving to them so much local authority as the circumstances make desirable.

There are two ways of incorporating cities and towns. One is by a special act of the Legislature creating a city or town; the other is by passing a general law giving directions as to the manner in which the inhabitants of thickly settled communities may organize into an incorporation, and specifying the authority and duty of such corporation after organization.

City officers are usually a mayor, who is the chief executive, a board of aldermen, or city council, to whom most of the powers of the city are entrusted, policemen, an assessor and collector of taxes, a city clerk, a city engineer, and various commissioners and boards.

A State has power to levy taxes of all kinds, and in any way not prohibited by the Federal Constitution, expressly as in case of imports, or impliedly as in case of agencies of the Federal Government.

A State has the power of eminent domain.

The police power of a State is its authority to protect the "health, morals, and safety of the people." This is

one of the high prerogatives of sovereignty, and cannot be parted with by contract.

QUESTIONS.

I. 1. Give short review of the relations between the United States and the original States. 2. Under what authority does the United States admit new States? 3. By what process was Texas admitted? How was West Virginia created? 4. What is the status of new States coming into the Union?

II. 1. Why is it necessary to subdivide the States? 2. What is the most important of the political subdivisions of the States generally called? For whose convenience is it made? 3. Name the principal county officers, and give the duties of each.

III. 1. What are justices precincts? What officers are elected in them? What are their respective duties? 2. What is a voting precinct? Why are they established? 3. Compare New England townships with counties and their subdivisions.

IV. 1. What is a city? What is a town? 2. Why are cities and towns organized? 3. What are the two methods of incorporating cities and towns? Explain each method. 4. How can the powers of a city be ascertained? 5. Name the usual city officers and state their respective duties.

V. 1. What is taxation? 2. What may be taxed by the States? 3. What matters are outside the States' power to tax?

VI. 1. What is the power of eminent domain? 2. For what purpose may it be exercised?

VII. 1. What is the police power of the State? 2. Why cannot a Legislature bind itself or a succeeding Legislature by an agreement not to exercise this power?

CHAPTER XIX.

BRIEF HISTORICAL SKETCH OF TEXAS.

Early Claims. The territory now included within the State of Texas was, in its early history, the subject of much controversy between Spain and France. Spain had undisputed claim to Mexico, and France to Louisi-

ana, but the boundary between these two could not be ascertained. It might be anywhere from the Mississippi on the East to the Rio Grande on the West, "as chance or fate determined."

In 1762 France ceded all of Louisiana west of the Mississippi to Spain. In 1800 Spain ceded Louisiana back to France, and in 1803 France sold it to the United States. Upon this purchase the boundary between the territory of Spain and that of the United States became a matter of real consequence. The Anglo-American has ever been an aggressive pioneer; and it was impossible, even had it been desirable, to prevent his going as far to the southwest as his government extended. Spain had serious apprehensions, which the future amply justified, that he would prove a restless and undesirable neighbor. The true boundary was so uncertain that the two Nations could not for a long time agree upon it. Under these conditions, in 1806, they did agree that the question of the boundary should be left open for a while, and that a neutral strip, that is, a section over which neither Nation should exercise jurisdiction, should be established, extending from the Sabine River on the west to the Arroya Hondo, a tributary of the Red River, on the east. Politically this neutral strip became somewhat of a No-man's-land, where, as no one had authority, all were free to go and do as they pleased. This condition as to the boundary existed until 1819, when the United States purchased Florida from Spain. In the treaty made at this time Spain relinquished all claim to territory east of the Sabine River, so that the boundary, at least in the territory near the Gulf coast, was fixed.

Mexican Revolution. Early in the nineteenth century the Spaniards in the territory now included in the Republic of Mexico began a revolt against Spain, which

was waged with varying results until 1824, when the Republic of Mexico was established by the adoption of a permanent written Constitution. This Government was to a large extent modeled after that of the United States, though in some important respects it differed from it.

Political Conditions in Texas. While this revolution, or series of revolutions, was in progress in Mexico, and even before that time, there were numerous political disturbances in Texas. These varied in cause, purpose and duration, but all had this in common: one or more enterprising Anglo-Americans were the moving spirits in each. None of them had the general support of the real settlers of Texas, and most of them were failures from the first. None achieved success that was permanent.

While Texas was under the dominion of Spain it had many political experiences. Its government was shifted about from one administration to another so rapidly that no one of these had much opportunity to leave any permanent impress upon the country or its institutions.

Texas in the Mexican Republic. In the creation of the Republic of Mexico, Texas was combined with Coahuila, the two forming a State under the name of Coahuila and Texas. This State had a written Constitution, which in some respects was quite similar to a State Constitution in the United States. The capital was in Saltillo, Coahuila. Its Congress, as the Legislature was called, consisted of twelve members, ten from Coahuila and two from Texas. Its Supreme Court sat in the State capital. All the traditions and most of the political ideas of the Mexicans were very different from those of the Anglo-Americans who had come, and who were still coming, into Texas. The Texans did not readily adapt themselves to a civilization and a form of government to which they felt themselves superior, and trouble was inevitable. One

of the principal grounds of complaint was that there was no stability in the Mexican Government. In the Constitution of the Mexican Republic it was provided that at some propitious time Texas and Coahuila should be divided, and Texas should become a separate State. The Texans naturally looked forward with impatient longing to the time when this promise should be fulfilled. It was a subject of frequent and anxious discussion among the settlers, and was often brought up in the public meetings.

Colonization of Texas. In the meantime Mexico had been persuaded into a number of schemes for the colonization of Texas, all of which contemplated the introduction of settlers from the United States who were to come under the control of a leader or *Empressario*, and who were to make their homes in Texas and develop its resources.

By special agreement or grant of authority the first of these settlements was made under the leadership of Moses Austin. At his death his son Stephen F. Austin succeeded to his rights, and became one of the founders of the Republic. The other settlements were made under terms of general colonization laws, either of the Republic in 1824, or of Coahuila and Texas after that date. Under these colonial settlements Anglo-American immigration was so increased that gradually the number of Mexicans was less than that of the immigrants.

Revolt in Mexico. The plan of government set forth in the Mexican Constitution was reasonably good, but the Mexicans seemed unable to exercise it. One ambitious ruler after another would either revolt against the Government as established under the Constitution, or would so pervert the Constitution as to amount to revolt in the end. This political unrest, always great, in

a short time developed into such distrust and opposition as to necessitate change.

Effect in Texas. Communication between Texas and the City of Mexico was at that time slow and difficult, so that the Texans were not always aware of the precise state of affairs in the heart of the Republic. They knew that conditions were disturbed and unsatisfactory, and that redress of political grievances through regular channels was tardy and uncertain. The provisions in the Constitution of the Mexican Republic which contemplated the separation of Texas from Coahuila and its erection into a separate State were still looked to by many Texans as a means of relief. They had been induced to come to Texas on the expectation that Mexico was to be a republic, governed under a written constitution; and those who came after 1824 claimed the specific guarantees of the Constitution of that year. This Constitution had been ignored and practically overthrown.

Santa Anna's Usurpation. In 1832 the Republicans of Mexico began a revolution to re-establish the Constitution. Santa Anna was their military leader, and no sooner had he overthrown the former despotic authorities than he turned the army, which the Republicans had helped him to raise, against his recent political adherents; and assumed the powers and authority of a military despot. The Texans did not even know how these matters were progressing in Mexico. They still had hopes of the Republic under the Constitution of 1824. One convention was held in 1832, and another in 1833, to induce the Mexican authorities to consent to the separation of Coahuila and Texas, and to grant to the latter all the privileges of independent statehood. The last of these sent Stephen F. Austin as a Commissioner to the Mexican Government to secure this. He was imprisoned for nearly

two years, after which he returned to Texas, reaching there in August or September of 1835. During his absence dissatisfaction at existing conditions increased.

The States of Zacatecas and of Coahuila and Texas, being in the extreme northeast of the Republic, were removed from the seat of Santa Anna's military operations. In 1835, having brought all of the other Mexican States sufficiently under his power, he moved his army against these northeastern States. He first attacked and subdued Zacatecas, and then invaded Texas. This invasion was in progress when Austin returned.

The Consultation of 1835. Such were the general conditions when the Consultation of 1835 was called to meet at San Filipe de Austin, the capital of Austin's Colony. This assemblage was larger and more representative than any of its predecessors; still, there were a number of large settlements not represented. On November 3, 1835, the Convention met and organized.

The members were divided in sentiment. Some desired separation from Coahuila, and existence as a separate State in the Mexican Republic. Others desired complete severance of all political relations with the Republic. After due deliberation the Consultation, as this convention was called, pledged loyalty to the Mexican Republic under the Constitution of 1824, and then renewed the demand for separation from Coahuila.

It also organized a provisional State Government, composed of a Governor, a Lieutenant Governor, and a Council, to whom it entrusted the conduct of the Government until the effort to secure separate statehood should either fail or succeed. In the meantime an army was being gathered together under the command of General Sam Houston for the purpose of resisting Santa Anna.

Convention of 1836. It became more and more apparent that the plan for separate statehood in the Mexican Republic could not be carried out. In December, 1835, the Governor and his Council called another Convention to meet in Washington on March 1, 1836. Delegates were elected from almost all of the large communities, and assembled on the day named. On the following day they declared Texas to be a free, sovereign and independent Nation. The Convention remained in session in order to prepare a permanent Constitution. As the majority of the new Nation's best citizens were then in arms, the Constitution could not be submitted to them for acceptance or rejection, nor could they take part in any Governmental affairs. It was therefore necessary for the Convention to provide a plan for carrying on the affairs of Government until an election could be held by the citizens. The preparation of these two papers, the Constitution and the plan of the temporary government, detained the Convention until March 17th.

Military Operations. In the meantime the Alamo had fallen with the slaughter of Travis and his two hundred men, and Fannin and his soldiers had been massacred at Goliad. Houston had reached Gonzales March 11th, and, being informed of the fall of the Alamo, had begun to retreat eastward. This eastward march continued with little interruption, with Santa Anna in rapid pursuit, until April 21st, when the two armies met on the battlefield of San Jacinto. It was here that Texan independence was won.

Government ad Interim. The temporary Government established by the Convention of 1836 consisted of a President and his Cabinet. David G. Burnett was installed as President. He and his Cabinet took charge of affairs, and administered them as best they could under

the existing circumstances. This *ad interim* Government ordered an election to be held on September 1st, 1836, for the purpose of voting on the adoption of the Constitution. In order to expedite matters the officers provided for in the Constitution were also to be voted on at this time. If the Constitution were adopted, the officers elected would qualify and at once go on with the Government; if the Constitution were defeated, the vote for officers would be of no effect.

Republic of Texas. The Constitution was adopted almost without opposition, and Sam Houston was elected President. The first Congress under the Republic assembled the following October, and the new Nation was fully organized in all its departments.

The Government thus organized was National in its nature. It was a Unitary State in the fullest sense, possessing in itself all the powers of sovereignty which in the United States are divided between the Federal Government and those of the States. Its Constitution was modeled to some extent after that of the United States, though the differences just pointed out mark it as unique. The three departments of government were recognized, and it was provided that no officer in any one of them could exercise any power properly belonging to any other, unless the Constitution so expressly stated.

The chief executive was called a President. His Cabinet consisted of a Secretary of State, Secretary of War, Secretary of the Navy, Secretary of the Treasury and an Attorney General.

The legislature was called the Congress, and consisted of two houses, the Senate and the House of Representatives.

The Judicial Department consisted of a Supreme Court, of District Courts, of County Courts, and of Justices

Courts. Original jurisdiction was divided among the last three; the Supreme Court having appellate powers only.

Jurisprudence of Texas. Spain is a civil or Roman law country; and thus the Roman law, as modified in Spain and Mexico, was in force in Texas when it achieved its independence. The Anglo-Americans were all from common law countries, and possessed the mental training and political traditions belonging to these. The responsibility of founding a system of jurisprudence was great, and they set themselves deliberately and patriotically to the task. There are some matters which are in their nature permanent, which will not admit of sudden or violent changes; there are others which may be altered at will without seriously disturbing the prosperity and peace of the community. The founders of the Republic chose wisely between these. Laws relating to the family and the rights and duties of the husband and wife they left unchanged. Laws pertaining to land and land titles were changed but little; but many others were altered radically. In court procedure the result was a decided compromise. The civil law had never recognized any distinction between law and equity such as existed in England and the common law States of the Union. No such a body as a grand or petit jury was known to the civil law. Its rules of pleading and evidence were very different from those of the common law. The founders of the Republic refused to introduce the distinctions between law and equity, but did establish trial by jury. They retained the civil law as to pleading, but rejected it as to evidence. Like choice was made as to many other matters which might be mentioned.

Original Legislation in Texas. Apart from this process of selection and combination of the best from each

system into a jurisprudence such as the world had never known, these statesmen originated some very important governmental policies. Among these is the homestead law. At common law all that a debtor had could be seized and sold for his debts. Even the bedding of his family, their food, or their fuel, could be taken, and in addition the debtor himself could be put into jail until the debt was paid. Texas declared in its Constitution in 1836 that no man should be imprisoned for debt, and its Congress in 1839 exempted from forced sale a small portion of personal property and, if the debtor had a family, a home. It further provided that on the death of the debtor these privileges and exemptions should continue for the benefit of his family. This home, free from seizure for debt, was to be the refuge for the unfortunate and his family, the hearth-stone where, in spite of adverse fortune, children could be reared who would be filled with love of country and who would be ready to live and die in its defense. This policy needs no higher commendation than the fact that in some form it has been adopted in nearly all of the forty-six States of the Union, and that no State which has adopted it has ever receded from it. The fathers of Texas laid their foundations deep and true, and their sons have builded upon them without fear or favor, until the fair fabric of our Jurisprudence is without a successful rival. It is simpler and more just than the common law; more direct and democratic than equity, and more modern and adaptable than the civil law. Under its benign provisions the courts have larger freedom in choosing the right and in rejecting the wrong than under any of the other systems supported only by precedent.

Success of the Republic. The independence of Texas was recognized by the United States in 1837, not long

thereafter by France, and then by England. It had many and great difficulties, mostly due to lack of finances. Its principal resources were in its extensive public lands, and its settled policy was to encourage the settlement and development of these. This policy is shown in almost all the legislation of the times. Large tracts of land were offered to heads of families who should settle within its borders, and smaller tracts to unmarried men. As already stated, homes made on these lands were exempted from sale for debts. The building of public and private schools was encouraged, and to the public schools was given an enormous share of the public domain. Short periods of limitation were made under which the man who had borne the "heat and burden of the day" in actually opening up the country was given the land on which he had settled, even though he had made a mistake as to the location of his land, or as to his title. Laws were passed entitling those who in good faith had improved lands belonging to another, if they had been in possession for one year, to just compensation from the owner, even though they had not occupied the lands long enough to give them title by limitation. By these and other laws the general policy of the Republic invited sturdy and intelligent immigrants to come and make homes for themselves, which would at the same time increase the taxable values and revenues of the country. This policy was wise in its conception, and is justified in its result. In 1845 Texas was annexed and became one of the States in the United States of America.

Texas as a State Prior to the Present Constitution. Texas was annexed to the United States in 1845. Its first Constitution as a State was adopted in that year. It was prepared for the purpose of organizing a government adapted to the proposed change in its political

status on coming into the United States. This Constitution was very similar to that of the Republic, except that it omitted all provision for the exercise of National powers, which were to be ceded by annexation to the United States. It is a most admirable Constitution for a State, and is often referred to by statesmen of ability and experience as a model by which such instruments may be drafted. It provides for a republican form of government, as that term has been explained. It separated the three departments of government, and assigned to each the duties generally recognized as belonging to it. The Legislature consisted of two Houses, as under the Republic. The chief executive was called the Governor. Otherwise the Executive Department was changed by dropping out the Secretaries of the Navy and of War. The other cabinet officers were retained in name, though the duties of some of them, notably of the Secretary of State, were markedly different. The Judicial Department was substantially the same as under the Republic, though some alterations were made. This Constitution necessarily recognized the United States of America, and the State of Texas as a member of that Union.

Secession. There were no changes in the fundamental law of Texas until the State adopted the Ordinance of Secession of 1861. It then became necessary to so amend the Constitution as to conform to membership in the Southern Confederacy. This was done. Texas cast her lot with the other Southern States, and bore her part in the devastating war that followed. She suffered little from invasion of her territory, but the strength of her manhood was freely given, and there was not one great battle fought in that long struggle in which Texans did not prove their willingness to die for their country and her institutions as they understood them.

Reconstruction. In 1866 the Constitution was again changed in an effort to meet the conditions brought about by the overthrow of the Confederacy. The days of Reconstruction came on, and it was necessary to adopt a new Constitution to meet the demands of Congress. A Convention was called in 1868. At this time all of the Confederate soldiers were disfranchised, and the Convention was far from a representative body of Texans. The Constitution was framed and accepted by Congress, and Texas, after the 30th day of March, 1870, was again a State in the American Union.

Present Constitution. This Constitution of 1869 was in force until April 19th, 1876, when the one framed and adopted in 1875 went into effect. Many amendments to this latter Constitution have been proposed from time to time. The majority of these have been defeated when submitted to the people for adoption. Several have been adopted. Among the most important of those adopted are: one providing for the creation of a Railroad Commission, which was voted on in 1890, and another, changing the judicial system, voted on in 1891.

This Constitution of 1876, as modified by the various amendments adopted since that date, is the present fundamental law of the State, and as such will be the basis of our treatment of the various departments of the Government of Texas.

RECAPITULATION.

The territory now included in Texas was for a long time in dispute between France and Spain. In 1803 the United States succeeded to all the rights of France.

The United States and Spain then agreed that there should be a strip extending from the Arroya Hondo on the east to the Sabine River on the west over which neither should exercise jurisdiction.

In 1819, in connection with the sale of Florida, Spain relinquished all claim to territory east of the Sabine.

The Mexican Revolution began about 1810, and continued till 1824, when the Mexican Republic was established with a written Constitution.

Under this Constitution Texas and Coahuila composed a single State, with a promise of separation when practicable.

The Anglo-American settlement of Texas under Spanish authority began early in the nineteenth century, and continued steadily till the Texas Revolution in 1836.

There were irreconcilable differences between the Anglo-Americans and the Spaniards. Their habits, traditions, and ideas of government were radically distinct.

These differences led to many disputes, and as the proportion of Anglo-Americans increased these became more frequent.

Several efforts were made to have Texas separated from Coahuila and recognized as a State in the Mexican Republic. After the attempts for separate statehood failed, and Santa Anna had set up a military government, Texas declared her independence on March 2, 1836.

The convention which declared independence organized a temporary government to carry on the war with Mexico, and also prepared a Constitution for the Republic, which was to be submitted to the people when that should become practicable.

Santa Anna was defeated in the battle of San Jacinto April 21, 1836.

The Constitution of the Republic was adopted September 1, 1836, and the Government fully organized thereunder in October, 1836.

The Republic of Texas was a complete Unitary State, having and exercising all the powers of sovereignty.

In this Republic the three departments were declared

to be separate. The Roman law, as modified by Spain and Mexico, was the law of the land. The Texans were common law people. The Jurisprudence of Texas was formed by combining much of the best elements of both the Roman and common law, and adding thereto other desirable doctrines.

The common law was substituted for the Roman in all matters not governed by written law.

The Texans refused to change materially the Roman law as to married persons, and in many respects as to lands. They refused to separate law and equity, or to adopt the common law or equity pleadings.

Texas originated the Homestead law.

Many laws were passed to encourage immigration. Many of these provided for gifts of tracts of lands to all actual settlers, and for the protection of settlers in good faith on lands belonging to others in their homes and improvements.

In 1845 Texas was annexed to the United States by treaty between the two Nations.

The first Texas State Constitution was adopted in 1845, and under it Texas entered the Union. This Constitution continued as the framework of the State Government until 1870, when the Reconstruction Constitution of 1869 was adopted.

The Constitution of 1869 was superseded by that of 1876, which, together with its amendments, is the present fundamental law of the State.

QUESTIONS.

- I. 1. What two European countries each claimed the territory now in Texas? 2. How was this dispute a matter of boundary?
3. How did the United States succeed to the rights of France?
4. In connection with what purchase was the boundary finally fixed and where is it located?

II. 1. When did the Mexican revolution begin and when was the Mexican Republic established, and how? 2. What was the political history of Texas under the Constitution of 1824, and what promise was there in that instrument as to the future of Texas? 3. How was immigration to Texas encouraged by the Mexican authorities?

III. 1. Outline political conditions in Mexico from 1824 to 1836. 2. What was the purpose of the Convention held in Texas in 1832, and in 1833? When did Santa Anna invade Texas, and for what purpose?

IV. 1. What was the Consultation of 1835? 2. When and where did it meet, and what action did it take as to the political status of Texas? 3. What was the nature and purpose of the government established by it, and of what officers did it consist?

V. 1. When and where did the Convention of 1836 meet? To what extent did this represent the people of Texas? 2. When was the Texas Declaration of Independence adopted, and by whom? 3. What was the purpose and effect of this declaration? 4. What two other papers were prepared by this Convention, and what was the nature and purpose of each? 5. When was the battle of San Jacinto fought, and what was its effect?

VI. 1. When was the Constitution of the Republic of Texas adopted, and when was the Government actually organized under it? 2. What was the nature of the Republic of Texas? What provision was made for keeping the Departments of Government separate? 3. What was the Chief Executive's office called? What was the legislature called?

VII. 1. What system of laws had been in force in Texas under the Spanish and Mexican Governments? 2. To what system were the Texans accustomed? 3. From what sources did the Texans select their laws? 4. Name some matters in which they followed the common law. 5. Did the Texans originate any new doctrines? Name one of them.

VIII. 1. Outline the general policy of the Republic of Texas. 2. When and how did it cease to exist?

IX. 1. When did Texas begin to exist as a State? 2. What powers did the people of Texas have under the Republic which were given up when they became a State? 3. Give the general provisions of the Constitution of 1845. 4. How often and at what times was the Constitution of Texas changed after 1845 and before 1875.

CHAPTER XX.

THE CONSTITUTION OF 1876.

Its Preparation and General Features. The Legislatures of Texas immediately after the Civil War, when a very large percentage of the citizens and particularly of the taxpayers of the State were disfranchised, were composed largely of men who had little, if any, permanent interest in the State or its prosperity. They looked only to the conditions then existing, and to the opportunity which these afforded for putting into effect policies which conformed to the opinions then ascendant. They were reckless with public money, and without regard for those who had made Texas what it was; and thus was provided a theatre in which the time-serving politician could exploit himself. To a very appreciable extent the same elements were in control in the Constitutional Convention of 1868. This was shown in the nature of the work done by that convention, and particularly in the Constitution which it put forth. Under this Constitution, which went into effect April 16, 1869, Congress readmitted Texas into the Union. Not long afterward Congress removed the political disabilities from most of those who had been disfranchised by the Fourteenth Amendment, and the real citizenship of Texas was again free to take part in her political affairs. At the general election in 1872 the Democratic State ticket, led by Richard Coke, of Waco, as candidate for Governor, carried the State by a large majority. E. J. Davis, who was Governor at the time, had been a candidate for re-election. The validity of the election was called into question by a habeas corpus proceeding before the Supreme Court of the State as then organized. That court declared the election void. The Legislature chosen at the election thus

declared to be null was largely democratic. General Grant was then President of the United States. Davis and the Republicans, relying on the decision of the State Supreme Court to sustain them, refused to surrender their offices to the Democrats who had been chosen to succeed them. The Democrats were insistent. Davis had the support of the Militia. Coke had the support of the Sheriff of the County and of the great body of citizens. The partisans of each side took up arms, Davis and his supporters occupying the executive chambers and lower story of the old Capitol building, while Coke and his followers held the Representative hall on the second floor. The situation was critical in the extreme. Davis called upon President Grant for military assistance. Grant took the time and trouble to ascertain the real facts of the case, and refused to interfere. Davis yielded, and Coke was sworn in as Governor.

Convention of 1875, and Constitution of 1876. A Convention was called in 1875 to prepare and submit a new Constitution. In this Convention were many men, illustrious in the history of Texas before and since that time, who had not been permitted to vote when the previous Convention was held. The instrument prepared and submitted by this body bears internal evidence of the experiences through which the State had passed during Reconstruction. The people had become distrustful of legislation. They put into the Constitution of 1876 more restrictive provisions than can be found in any other fundamental law. There are twenty-nine sections in the Bill of Rights, many of which contain a number of limitations. There are at least thirty-five restrictive sections in the Article on the Legislative Department, several of these having quite a number of subdivisions, and one, Section 56, embodying thirty separate denials of power. In addition

to all these, there are restrictive clauses scattered throughout the body of the Instrument. This prevalence of negation stands as a monument to the efficiency of the carpet-bagger as a teacher in the school of practical politics.

The Preamble. "Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution." This simple sentence is worthy of most careful consideration. It declares that the people of Texas are the source and seat of all political power pertaining to that State. This power is not derived, but primary; not delegated, but inherent. The same thought is expressed in Sections 1, 2 and 3 of the Bill of Rights, in these words:

SECTION 1. Texas is a free and independent State, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the States.

SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and subject to this limitation only they have at all times the inalienable right to alter, reform, or abolish their government in such manner as they think expedient.

SEC. 3. All free men when they form a social compact have equal rights, and no man or set of men is entitled to exclusive public emoluments or privileges but in consideration of public services.

In these sections the people of Texas recognize the Constitution of the United States and its paramount nature in all matters covered by it, and their obligation to maintain a republican form of government, thus showing their attitude toward the United States and its Constitution. This is followed by the solemn declaration that in all things else the people of Texas are sovereign, charged with the responsibilities of and equal to the task of self-

government. They declare "that all political power is inherent in the people." This means "the people" collectively, and that, subject to the limitations in the Constitution of the United States and of the State, the collective will, or, in other words, the will of the majority, rules.

Recognition of God and Religious Liberty. Returning to the opening clause of the preamble and its invocation of Almighty God, we find in it a recognition of the indisputable fact that the people of Texas, taking them collectively, are a Christian people; and that in their collective capacity, when they come to great crises in their history, they look to God and depend upon Him for blessing and aid. This right of the great majority of the people, in whom inheres all political power, to call to their aid the God of their fathers, is an inalienable right, of which they cannot be deprived so long as they hold to the Christian faith in reverence and sincerity. On the other hand, this majority has no right to force the conscience of the minority or of any individual who does not share in this faith. This fundamental truth is fairly recognized in the Constitution, Sections 4, 5, 6 and 7 of the Bill of Rights, which are as follows:

SEC. 4. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

SEC. 5. No person shall be disqualified to give evidence in any of the courts of this State on account of his religious opinions, or for want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

SEC. 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support

any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

SEC. 7. No money shall be appropriated or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

It is useless to attempt to add to the force and authority of the language just quoted. Taken with the preamble, it means that every man shall be free to entertain his own religious beliefs, without interference of any kind; that this right shall be protected by law; that church and state are and of right ought to be separate; that no one shall be deprived of any right on account of any religious belief or the absence of any such belief; that the privilege of holding office within the State is not extended to any one who does not acknowledge the existence of a Supreme Being; and that since the majority of the people are Christian in faith that this majority has and exercises the right to recognize and call upon God for guidance and blessing in their political action.

The remaining sections of the Bill of Rights will be considered later.

The Powers of Government. Article II of the Constitution of Texas provides:

SECTION 1. The powers of government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection

of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

It will be noticed that there is no article or section in the Constitution of the United States corresponding to this. While that instrument deals with the three great departments of government as separate, it does not expressly declare them to be so, nor does it deny to an officer in one of them the right to exercise powers pertaining to another. The Texas Constitution does both. It is well also to note that the inhibition against the exercise of power by the same person in two departments applies in all instances unless expressly permitted by the Constitution. Hence, any officer claiming such right must be prepared to show the express grant of authority so to do.

Too much stress cannot be laid upon this Article. Tyranny is but the concentration of power; and the officer, or set of officers, who has the power to make, construe, and enforce the law on any subject is as to that matter endowed with tyrannical power. It may be that they will use it properly and for the public good, but the chances are against this, even when the authority is short-lived; and, if such power be made perpetual, its ultimate abuse is a practical certainty. When the people are requested to confer such concentrated power the question for consideration is not so much what good can good men accomplish under it, but what evil may the vicious do under its protection.

Political Rights. Article VI of the Constitution of Texas provides:

SECTION 1. The following classes of persons shall not be allowed to vote in this State, to-wit:

First—Persons under twenty-one years of age.

Second—Idiots and lunatics.

Third—All paupers supported by any county.

Fourth—All persons convicted of any felony, subject to such exceptions as the Legislature may make.

Fifth—All soldiers, marines and seamen employed in the service of the army or navy of the United States.

SEC. 2. Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector; and every male person of foreign birth, subject to none of the foregoing disqualifications, who, at any time before an election, shall have declared his intention to become a citizen of the United States, in accordance with the Federal naturalization laws, and shall have resided in this State one year next preceding such election, and the last six months in the county in which he offers to vote, shall also be deemed a qualified elector; and all the electors shall vote in the election precinct of their residence; provided, that electors living in any unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes.

SEC. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election within the limits of any city or corporate town, shall have the right to vote for mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred shall be levied upon the persons debarred from voting in relation thereto.

SEC. 4. In all elections by the people the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot-box; and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more.

SEC. 5. Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

Article VI regulates the right to vote. It is noticeable that this right is not made to depend on citizenship either in Texas or in the Federal Government. The Article begins by excluding certain classes from the privilege of voting. These may be summed up as follows: Minors, idiots, lunatics, paupers, convicted felons, and soldiers in the United States Army or Navy. The second section specifies who may vote. These are adult males, who have resided in the State for one year and in the district or county in which they offer to vote for the last six months preceding the election; they must either be citizens of the United States, or must have declared their intention to become such in accordance with the laws of naturalization. Under a later amendment a person thus qualified must have paid, before the first of February in the year in which he offers to vote, all poll taxes imposed by law for the current year. The elector can vote only in the election precinct in which he resides at the time the election is held.

In city or town elections which do not determine the expenditure of money all persons qualified to vote in State elections, who have resided in the city or town for the last six months before the election, are permitted to vote. If the election involves the expenditure of money, only those are qualified to vote who are voters under the State laws and who pay taxes on property in such city or town. Under the late amendment to the Constitution to be entitled to vote at a city election the person must have paid State, county, and also city poll tax, before February 1 of the year in which he offers to vote.

Regulation of Elections. The first clause of Section 4. Article VI, is as follows:

In all elections by the people the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make

such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot-box.

The concluding sentence of Section 2, Article XVI, declares:

The privilege of free suffrage shall be protected by laws regulating elections, and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult, or other improper practice.

A ballot is a paper on which the voter indicates the names of the candidates for whom he desires to vote, and the respective offices which he desires each to fill. These names and offices must be printed or written. To vote by ballot is to deposit such a paper with the proper election officers, and to have the same fairly counted and given due recognition. The voter's preference, as expressed, must be recognized and estimated in making up the result; but his right does not stop here. Not only must his vote be counted, but it must be counted for what it is really worth; that is, it must be given a value equal to every other legal vote cast, and must be unaffected by the casting of any illegal vote. If at an election ten men only were legal voters, any six of them, collectively, would be entitled to carry the election, for they would constitute a majority. It would be manifestly unlawful for the election officer to permit ten other men who had no right to vote to deposit ballots against the six lawful voters, and to declare the election carried against the six on account of these unlawful votes.

Laws to secure the protection of the ballot-box and the purity of elections, therefore, must cover the following:

First. The prescribing of proper qualifications for voters. This is done by the Constitution. Second. The giving to every qualified voter a reasonable opportunity to cast his ballot freely, thereby representing his own de-

liberate judgment. Third. The casting and count of such ballot; and fourth, the keeping of all illegal votes out of the count. Under such laws each legal vote will have its just value in arriving at the result. Under the sections of the Constitution just quoted it is the duty of the Legislature of Texas to make stringent laws covering all these points. Acting under these sections, and under the power inherent in it as the Legislative Department of the State, the Legislature has recently passed a very elaborate and salutary bill regulating elections. This is generally known as the Terrell Election Law, being so called from Honorable A. W. Terrell, who introduced the original bill upon which the statute as passed was formed.

So highly prized is the right to vote that the Constitution exempts voters "from arrest during their attendance at elections and in going to and returning therefrom," except in cases of "treason, felony or breach of the peace." All saloons are required to be closed on election day, and it is a criminal offense to have or use intoxicants of any kind at or near the polls.

Right to Hold Office. There is only one Constitutional qualification affirmatively required in Texas of all officeholders, and that is that they must acknowledge the existence of a Supreme Being.

There are a number of disqualifications announced. Some of these are general and permanent, affecting qualification for all offices, and for all time; others apply only to certain offices; and some only during the continuance of the designated condition. Article XVI, Section 1, disqualifies from holding office, and from voting as well, any citizen of Texas at any time after the adoption of the Constitution of 1875 who shall fight a duel, or act as a second in a duel, or who shall send or accept a

challenge to fight a duel, or who shall "knowingly assist in any manner those thus offending."

Section 5 of the same Article disqualifies any person who shall have been convicted of having "given or offered a bribe to procure his election or appointment." A bribe here has a very broad meaning, including practically any pecuniary or personal benefit to the person aiding in securing the office.

Among the partial or temporary disqualifications are the following: The holding of any office of trust or profit under the United States disqualifies from concurrent holding of any State office (Art. XVI, Sec. 12).

No person holding any office of trust or profit under the United States or Texas or any foreign government during such holding shall be eligible to the Legislature (Art. III, Sec. 19).

Members of the Legislature during their terms of office are not eligible to any office created by the Legislature of which they are members, nor the salary or emoluments of which have been increased by such Legislature, nor to any place or office the appointment to which may be made in whole or in part by the Legislature (Art. III, Sec. 18).

No person who has been entrusted with public money is eligible to any office under the State until he has paid over all such money to the proper officer, and has obtained a discharge from all further obligations on that account (Art. III, Sec. 20).

Right to Assemble and Petition. Article I, Section 27, guarantees that "The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and apply to those invested with the powers of Government for redress of grievances or other purposes, by petition, redress or remonstrances."

RECAPITULATION.

Texas was readmitted into the Union under the Constitution adopted in 1869.

In 1875 a Constitutional Convention prepared and submitted to the people a Constitution which if adopted was to supersede that of 1869. It was adopted and went into effect in 1876. It is usually spoken of as the Constitution of 1876, and as subsequently amended is the present organic law of the State.

During the reconstruction period the people of the State had become distrustful of their Legislatures, and so they put into the Constitution of 1876 more restrictive provisions than had been included in any of those preceding it.

The preamble and Sections 1 and 2 of the Bill of Rights assert the doctrine that political power is inherent in the people of the State collectively, and that the exercise of such powers by individuals is by virtue of authority conferred by the people. It recognizes the Constitution of the United States and its paramount authority on all matters covered by it. In all things else it asserts the sovereignty of the people of the State.

The preamble and Sections 4, 5, 6 and 7 of the Bill of Rights taken collectively recognize that Texas is a Christian country, but forbid the State in any way to establish any religion or take away freedom of conscience from any individual.

Article II divides the government into the three usual departments, Legislative, Executive and Judiciary, and then forbids any officer in any of them to exercise any power properly belonging to another without express authorization in the Constitution.

Article VI regulates suffrage. This right does not depend on citizenship. Minors, idiots, lunatics, paupers

and regular soldiers in the United States Army are denied this right. Adult males not belonging to any of the above classes who are citizens of the United States, or who have made application for naturalization, who have resided in the State one year or the county six months, are given the right to vote.

To entitle to vote the elector must have paid the poll tax assessed against him for the previous year before February 1 of the year in which he offers to vote.

It is the duty of the Legislature to make laws to protect the people in free and fair elections. Such an election is one in which any qualified voter has a fair and reasonable opportunity to express his own personal choice and to have that choice receive its proportionate value in determining the result.

Voting is by ballot. A ballot is a paper on which the voter indicates his choice in the way provided by law, and which he deposits with the election officers to be counted by them.

No one who does not acknowledge the existence of a Supreme Being can hold office. Duelling, conviction of felony, and failure to account for public money, disqualify from holding public office.

QUESTIONS.

I. 1. Describe the general political conditions in Texas from 1866 to 1869. 2. When and under what Constitution was Texas admitted into the Union after the war of 1861? 3. Outline briefly the election of 1872 and its consequences.

II. 1. In what way does the Constitution of 1875 show the people's distrust of the Legislature, which they had learned during Reconstruction? 2. What do we learn from the preambles of the Constitution and from Sections 1 and 2 and 3 of the Bill of Rights, as to the seat of sovereignty? 3. How is God recognized in the preamble to the Constitution? How is religious liberty guaranteed in the Bill of Rights?

III. 1. What does the Constitution provide as to separation of the departments of Government? 2. What is the force of the concluding portion of this provision? 3. Why is that provision important?

IV. 1. Who cannot vote in Texas? 2. Who may vote in Texas? 3. Is citizenship in Texas or in the United States an essential qualification of a legal voter? 4. About what proportion of the people of Texas can vote? 5. What is meant by voting by ballot? 6. What are the essentials of a fair election, and how can such an election be secured? 7. What is the present Texas election law called? 8. To what extent and why are voters free from arrest on election day?

V. 1. What is the right to hold office? 2. What continuing disqualifications for office-holding are contained in the Constitution? 3. What temporary or partial disqualifications are there? 4. What is the right of petition?

CHAPTER XXI.

LEGISLATIVE DEPARTMENT.

Legislative Power of the State. "The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled 'The Legislature of the State of Texas.'" Art. III, Sec. 1.

It is well to contrast this with the corresponding provision in the Constitution of the United States, which is as follows: "All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

The contrast lies in the first clauses of the sections. The language in the State Constitution is: "The Legislative power of this State;" that in the United States Constitution is, "All Legislative power herein granted." The State deals with power already possessed or inherent in it; the Federal Government with power not

theretofore possessed, but granted by the Constitution. This difference is no accident. It is the statement of a fundamental fact, which, though often ignored and sometimes even denied, is still too firmly established to be seriously doubted.

All Legislative power over all political matters vested in the people of Texas when they established their independence from Mexico. These powers they exercised in the establishment and maintenance of the Republic. They surrendered a portion of them to the United States upon annexation. All not so surrendered remained in them, and the adoption of the State Constitution and organization of the State Government under it was the exercise of these inherent powers. The Constitution of the United States was the creation of a new nation, out of separate and co-ordinate sovereignties, which found it to their common advantage to delegate certain of their powers to this new creation. It had no existence prior to the Constitution, and could not possess powers except those granted to it in the act of bringing it into being.

The Texas Constitution does not attempt to confer all Legislative power without limitation. That would be equivalent to declaring Texas to be a unitary state, which it ceased to be when it by treaty with the United States became a part of that Government. The statement is "the Legislative power of this State;" that is, all Legislative power not given over to the Federal Government, all this residuum of Legislative power, is vested in the Legislature of Texas. From these facts it follows that for an act of Congress to be valid its supporters must be able to show authority in the Constitution of the United States for its enactment, while an act of a State Legislature is valid unless its opponents can show some-

thing in the Constitution of the United States, or in the laws passed by Congress in pursuance thereof, or in the Constitution of the State, which makes the act invalid.

The Legislature. The Legislature of Texas consists of a Senate and House of Representatives. It must meet once every two years on the second Tuesday in January after each general election, and may be called together oftener by the Governor. At a regular session it may legislate upon any matter within the Legislative power of the State. At a called session it can act only on matters submitted to it by the Governor.

The House and Senate must concur in all laws and joint resolutions passed by the Legislature.

“Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.”

Each House judges of the election and qualification of its own members, elects its own officers, determines its own rules of procedure, keeps a record of its own action, may punish or expel its members for improper conduct, and may punish other persons for contempt.

The Senate. The State is divided into thirty-one Senatorial districts, and a Senator is elected from each by the qualified electors. A Senator must be a citizen of the United States and a qualified voter of the State, twenty-six years of age. He must have resided in Texas for ten years at the time of his election, and the last year he must have resided in the district from which he is elected. The term of a Senator is four years. Every ten years the State is divided on the basis of population as shown by the last preceding census. At the first session after such reapportionment the Senators draw for terms, half serving for two years, and the other half for four.

For the remainder of that ten years one-half of the Senators are elected every two years. The terms of those chosen at the last election before the reapportionment is for only two years. This process is begun over after each apportionment.

The functions of the Senate, apart from the House, are the confirmation of officers appointed by the Governor, and the trial of all cases of impeachment on address presented by the House.

Organization. The Lieutenant Governor presides over the Senate. He has a right to vote only in case of a tie. The Senate elects its other officers, the President *pro tem.* being chosen from its own members, and the others from persons not members. These other officers consist of a Secretary, an Assistant Secretary, a Journal Clerk, an Assistant Journal Clerk, a Calendar Clerk, an Enrolling Clerk, a Sergeant-at-Arms, an Assistant Sergeant-at-Arms, a Doorkeeper, Assistant Doorkeeper, and a Chaplain.

House of Representatives. The number of the members of the House is not fixed by the Constitution. The minimum number is 93; the maximum cannot exceed one Representative for every 15,000 inhabitants, nor can the number be more than 150. There are now 109 districts, and 133 members.

The Representative Districts are determined by the Legislature, the State being so divided as to give one Representative to a designated number of inhabitants. This number is determined by the Legislature, but cannot be less than 15,000.

The county is taken as the unit in this distribution of the Representatives as far as it may be conveniently done. If one county has approximately the number of inhabitants which entitle to a Representative, it is made

a Representative District, and one member is elected from it. If a county has twice that number of inhabitants, it has two Representatives. If there are a number of contiguous counties, no one of which has the requisite number, they are combined into a district. If there are several counties, each of which has population more than sufficient to entitle it to one Representative, but not enough for two, each is given a separate representative from it, and then all of them are combined into another district and another Representative is allowed from all of these counties. Such a Representative is frequently called a floater.

A Representative must be twenty-one years of age, a citizen of the United States, a qualified voter, and must have lived in the State two years and in his district one year just preceding his election. The term of office is two years.

Organization of the House. The House elects its own presiding officer, called a Speaker, from its own membership. It also selects its other officers. These officers are a Chief Clerk, a Calendar Clerk, a Journal Clerk and Assistant Journal Clerk, an Engrossing Clerk, an Enrolling Clerk, a Reading Clerk, a Postmaster, a Doorkeeper and a Chaplain.

Payment. Members of each House receive five dollars a day for the first sixty days, and two dollars a day during the remainder of the session. The purpose of this provision is to encourage expedition in Legislative action. It has not had this result, as the Legislature can consume the sixty days without taking up some of the most important matters requiring attention, and adjourn. The Governor will then call them into special session to attend to those matters which are imperative. Thus they receive the five dollars per day for ninety days. In

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addition to their per diem, members receive mileage, not to exceed twenty cents per mile, for coming to and returning from the Capitol.

Proceedings in the Legislature. Article III of the Constitution provides:

Sec. 29. The enacting clause of all laws shall be, "Be it enacted by the Legislature of the State of Texas."

Sec. 30. No law shall be passed except by bill, and no bill shall be so amended in its passage through either House as to change its original purpose.

Sec. 31. Bills may originate in either House, and when passed by such House may be amended, altered or rejected by the other.

Sec. 32. No bill shall have the force of a law until it has been read on three several days in each House, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble, or in the body of the bill), four-fifths of the house in which the bill may be pending may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

Sec. 33. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Sec. 34. After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance shall be considered at the same session.

Sec. 35. No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Sec. 36. No law shall be revived or amended by reference to its title; but in such case the act revived or the section or sections amended shall be re-enacted and published at length.

Sec. 37. No bill shall be considered, unless it has been first referred to a committee and reported thereon; and no bill shall

be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.

Sec. 38. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

Sec. 39. No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless, in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

Sec. 40. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

Sec. 41. In all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given *viva voce*, except in the election of their officers.

These sections require little if any explanation. The general treatment on Legislative proceedings given in Chapter IV, studied in connection with them, will make them sufficiently clear.

General Provisions Regarding the Legislature. As the States are not governments of enumerated powers, State Constitutions do not contain many specific grants of power to Legislatures. This is true of the Texas Constitution now under consideration. It has a large number of sections under the head of requirements and limitations. Those sections falling under the first of these heads do not grant power, but specifically charge the Legislature to use in designated ways power already

possessed. These indicate State policy, but do not add to or take from the authority of the Legislature.

Those sections coming under the head of limitations can be more satisfactorily treated under the general head of restrictive provisions.

Restrictive Provisions. Many of the restrictions on the Legislature are contained in the Bill of Rights, and affect this Department no more than the others. Others relate to taxation and public debts and claims, and will be considered in connection with those subjects. Some of the others we will now present.

Restrictions as to Local or Special Laws. Local laws are laws which affect only a particular place. Special laws affect only a particular person or a private matter. By Section 56 of Article III the Legislature is forbidden to pass local or special laws relating to a number of subjects enumerated in the section. This enumeration requires twenty-nine subdivisions of the section to contain it. Its length, and the relative unimportance of the subjects, preclude its insertion or detailed treatment. It is well to remember that there is such a restrictive section, and to refer to it for information when the occasion arises.

Section 57 regulates the manner of passing local or special laws in those cases in which this is permitted. It requires that before such a law shall be passed those interested in it shall publish the substance of the contemplated law in a newspaper, in the locality to be affected by it, for at least thirty days before introduction of the bill in the Legislature. Proof of such publication must be made to the Legislature before it can act on the bill.

The Legislature is expressly authorized to pass local laws for protection of game or fish, and with regard to fences and stock raising. It can also form local school

districts, even without giving the notice referred to above.

By Section 56, Article XVI, the Legislature is forbidden to use public money for the purpose of encouraging immigration.

RECAPITULATION.

The Legislative power of Texas embraces all political power not given over to the United States in the Act of Annexation.

All this Legislative power is vested in the State Legislature, consisting of two Houses, the Senate and House of Representatives.

The Legislature meets biennially, and oftener if called by the Governor. In its regular session it can legislate on any matter over which the State has jurisdiction; in called session only on such matters as are submitted to it by the Governor.

Each House determines the election and qualifications of its own members, elects its own officers, and establishes its own rules of procedure.

There are thirty-one Senators. The term is four years. They are divided so that one-half go out of office every two years.

The only separate powers of the Senate are to try impeachments and pass on appointments made by the Governor.

The number of Representatives is not fixed absolutely. It cannot exceed 150. There are now 133. The term of office is two years. All revenue bills must originate in the House.

There are many restrictive provisions in the Constitution which affect the Legislature in connection with the other departments of the Government. These are treated in a subsequent chapter.

The Legislature is forbidden to pass special or local laws except in cases where this power is expressly conferred. Notice of the introduction of such bills must be given in those cases in which they are permitted.

QUESTIONS.

I. 1. In what is the Legislative power of Texas vested? 2. To what subjects does this power extend? 3. Why is the language on this subject in the State Constitution different from that in the Federal?

II. 1. Of what is the Legislature of the State of Texas composed? 2. What is the difference between a regular and a called session as to the matters on which each may legislate? 3. What different actions may each House take, without the concurrence of the other?

III. 1. How many Senators are there? 2. What qualifications must a Senator have? 3. How long do they serve, and what provision is made for classifying Senators so as to have the terms expire at different times? 4. What functions has the Senate in which the House does not share?

IV. 1. What is the minimum and what the maximum number of Representatives? What is the present number? How are Legislative districts fixed? 2. What is the term of a Representative, and how are they chosen? 3. What are the qualifications of a Representative? 4. Who presides over the House? What other officers has it, and how are these selected?

V. 1. What compensation do Legislators receive? 2. What is the purpose of diminishing the pay of Legislators after sixty days? 3. How does this work out practically?

VI. 1. Compare the Constitutional provisions copied from the Constitution with the general treatment of this subject in Chapter IV. 2. Outline simply the method of introducing and passing a bill.

VII. 1. Why does not the Texas Constitution contain an enumeration of subjects on which the Legislature may act? 2. Why is it necessary to put restrictions on a State Legislature? 3. In what part of the Constitution are most of the restrictive provisions? 4. What are the Constitutional provisions as to local legislation?

CHAPTER XXII.

THE EXECUTIVE DEPARTMENT.

Of Whom Composed. The Executive Department of the State of Texas consists of the following State officers: a Governor, a Lieutenant Governor, a Comptroller of Public Accounts, a Treasurer, a Commissioner of the General Land Office, an Attorney General, a Superintendent of Public Instruction, who are elected by the people; and of a Secretary of State, a Commissioner of Insurance, Statistics and History, a Commissioner of Agriculture, an Adjutant General, two Commissioners of Pardons, a State Health Officer, a State Purchasing Agent, a Revenue Agent, and a Tax Commissioner, who are appointed by the Governor with the approval of the Senate. Besides these there are numerous boards and principals in charge of the different charitable institutions, and of the penitentiaries and reformatories. There are also numerous county officers in this department.

Manner of Election. The term of all these officers is two years. Those who are chosen by the people are voted for at every biennial election. These votes are counted by the proper officers of election; in the case of State officers the returns are made to the Secretary of State, who retains them until the meeting of the Legislature in regular biennial session. He then delivers them to the Speaker, who, during the first week of the session, opens and publishes them in the presence of both Houses. The person having the highest vote for each office is declared elected thereto. In case of a tie between two candidates for any office the Legislature immediately chooses one of them by a joint vote of both Houses. In case of a con-

tested election for either of said offices it is decided by the Legislature in joint session.

The Governor and Lieutenant Governor are inaugurated on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable.

Vacancy in the office of Governor is filled by the accession of the Lieutenant Governor to the office. In such event the President *pro tem.* of the Senate becomes Lieutenant Governor. Vacancies in any other of these offices are filled by appointment of the Governor, with the approval of the Senate.

The Governor. The Governor must be at least thirty years of age, a citizen of the United States, and a resident of Texas for at least five years immediately before his election. He receives four thousand dollars a year as salary, and has the use of the Governor's Mansion. He is required to give his whole time to the duties of his office, and is forbidden to engage in any other business or employment, public or private. He is Commander-in-Chief of the State Militia, except when it is called into the actual service of the United States Government. He is charged with the execution of all the laws of the State, the suppression of insurrection, the repelling of invasions, and the protection of the frontier. For these purposes he may call out the full force of the State Militia.

It is his duty to send messages to the Legislature informing them of the condition of the State, and recommending such measures as he may deem expedient. He is particularly charged with looking into the financial affairs of the Government, and with furnishing each regular session of the Legislature with an estimate of the money needed for the ensuing two years. He is the representative of the State in its intercourse with the United

States, and with other States. He has the power to pardon, reprieve, or commute the punishment of all persons convicted of crime, except in case of treason or impeachment. In cases of treason he can pardon only with the concurrence of the Senate. In the exercise of his pardoning powers he is assisted by two Commissioners called the Board of Pardons.

He appoints all State officers not chosen by election, and fills all vacancies in State and district offices. All these appointments are subject to approval by the Senate.

Veto Power. The Governor has the power to veto bills passed by the Legislature. This he must do by message sent to the House in which the bill originated, stating the fact of his disapproval and his reasons therefor. For this purpose he has ten days from the reception of the bill by him, if the Legislature continues in session that long. If the Legislature adjourns within ten days, he has twenty after the adjournment. He vetoes after adjournment by filing his disapproval and the reasons therefor with the Secretary of State, and by having these published within the said time. Failure to veto a bill in the manner applicable thereto is equivalent to approval. In case a veto message is sent to the Legislature the bill will nevertheless become a law if it is passed thereafter by a two-thirds vote of each House.

Lieutenant Governor. The Lieutenant Governor presides over the Senate. In the event of the death, resignation or impeachment of the Governor he succeeds to that office, must discharge all of its duties, and is entitled to all its emoluments.

Comptroller of Public Accounts. The Comptroller is charged with the duty of keeping the accounts of the State with all persons having business transactions with it. It does not matter from what source the money is

derived, if it belongs to the State and is handled by any State officer or other officer collecting for the State, the records of the Comptroller's office should show the fact of its receipt and disbursement. When money is due from the State, as shown by the records in his office, he draws a warrant upon the Treasurer for the amount due. If money is due the State, it is his business to see that it is paid. These business transactions are exceedingly voluminous and varied in their character, and the amount of work required in keeping all these different accounts keeps busy a large number of trained clerks and assistants.

The Treasurer. The State Treasurer actually handles and has the custody of the State's money. No money can lawfully be paid out of the Treasury unless it has first been appropriated by the Legislature to the purpose for which the payment is made, and unless the Comptroller has drawn his warrant on the Treasurer for the amount.

Commissioner of the General Land Office. This office is the head of the Texas Land System. Some idea of the extent and importance of his official duties will appear from a brief presentation of that system, and the methods of acquiring lands under it. This is given in Chapter XXVI.

All of the various activities involved in carrying on this system are under the direct supervision of the Commissioner of the General Land Office. He is provided with a reasonable number of competent assistants, who attend to the details of the work. His is one of the most important business departments of the State.

The Attorney General. The Attorney General is the chief legal adviser of the State and its officers, from the Governor to the lowest official.

The section in the Constitution providing for this office is as follows:

SEC. 22. The Attorney General shall hold his office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power, or demanding or collecting any species of taxes, toll, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law; *provided*, that the fees which he may receive shall not amount to more than two thousand dollars annually.

One man cannot possibly perform all these duties. The Legislature has from time to time passed laws authorizing the employment of competent men to assist in their discharge. One is called the Assistant Attorney General. He is appointed by the Governor, and represents the State in all cases before the Court of Criminal Appeals. The others are appointed by the Attorney General, and take charge of such portions of the work of the Department as he assigns to them.

The duty of giving legal advice to the heads of the departments and other executive officers is very onerous and delicate. When a statute is passed which is uncertain in its meaning the executive officer required to enforce it refers the difficulty to the Attorney General. He and his assistants consider the matter and give a written opinion to the officer as to the meaning of the

law. This opinion is not an authoritative decision, such as is rendered by a court, but is only legal advice from an attorney. The matter is still open to question and litigation. In the large majority of instances the opinions given are sustained. The number of opinions called for is increasing by new and somewhat experimental legislation. A great many new issues have arisen in late years, and the Legislature has been called upon to prevent new wrongs, and to give more efficient remedies for old ones. Litigation to which the State is a party has also greatly increased, and the demands upon the Department in this regard are very great. The position of Attorney General is a very important one.

The Superintendent of Public Instruction. This officer is elected by the people of the State, holds office for two years, receives a salary of \$2,500 per annum, and has charge of the public school system of the State. His duties are varied and exacting. They all pertain to educational matters, and will be more fully considered in connection with that subject, which is of sufficient importance to require separate treatment.

The Secretary of State. This is the most important of the appointive State officers. It is made appointive because its duties bring the incumbent into such close relations with the Governor. He holds his office for two years. He is the custodian of the Seal of the State and the keeper of all records belonging to the office of the Chief Executive and the Legislative bodies, such as Journals of Constitutional Conventions, Houses of the Legislature, authoritative copies of all laws and resolutions passed by the Legislature, etc. He issues all proclamations by the Governor, receives all election returns for State and district officers, calls the House of Representatives to order on its first assembling, administers

the oath of office to its members, and delivers to its Speaker the election returns for State officers. He commissions all State and district officers, and all notaries public, and receives and files the charters of all corporations and collects the franchise tax upon them. Under recent legislation he is empowered to declare forfeiture of corporate rights for failure to pay this tax. He issues permits to foreign corporations, except those engaged in insurance, to do business within the State, and performs many similar duties. He is allowed a Chief Clerk, who in his absence discharges his duties, and a number of other assistants.

Commissioner of Insurance, Statistics and History. The duties of this office, though somewhat incongruous, are of great consequence to the public. Among them is the supervision and control of all insurance companies doing business in the State. It is immaterial whether the insurance is fire, life, health, accident or fidelity, or whether the company be foreign or domestic, it falls within the jurisdiction of this Commissioner. It is his business to investigate the solvency and reliability of all companies, and to ascertain whether or not they are complying in all respects with the law in making required deposits, paying losses, etc. If they are, he grants them license upon payment of the legal fees; if they are not, he does not permit them to do business within the State. The experience of other States with companies organized for some of these purposes shows the wisdom of creating and maintaining this office.

As Official Statistician he informs himself on all matters of public interest and tabulates them so far as he is able with the assistance allowed him.

As Commissioner of History he has charge of all books, literature, and relics belonging to the State which per-

for the Deaf and Dumb, the State Orphanage, the State Colony for Epileptics, the Confederate Home, the State University, the Agricultural and Mechanical College, the State Reformatory and Penitentiaries, are managed by Boards appointed by the Governor. The managements differ in detail, but in practically all, except in case of the University and College, the Governor appoints the executive head. In these two the head is chosen by the Board in control. These Boards have the general management and supervision of the respective institutions under their charge. They determine under the general laws of the State the policy and scope of work of each, and appoint those who are actually engaged in them.

The State Tax Commissioner. It is the duty of this officer to be thoroughly informed as to all matters pertaining to taxation, to advise the State as to the best methods of raising revenue by taxation, and also to see that all persons and things within the State are properly assessed. He is especially charged with looking after taxes against or on corporations and their assets, tangible and intangible. He, the Secretary of State and Comptroller constitute the State Intangible Tax Board, whose duty it is to equalize the tax assessments on railroads and the property of other corporations.

Railroad Commission. The Texas Railroad Commissioners are sometimes classed as executive officers, but their duties are so varied that it is difficult to determine to which Department they really belong. Consideration of them and their duties is deferred until the subject of railroads is taken up.

County Officers. There are numerous county officers who belong to the Executive Department. It is more convenient to consider them in other connections, and they are passed over here.

RECAPITULATION.

The chief executive is the Governor. He is charged with the duty of executing all the laws of the State.

Vacancies in the office of Governor are provided for by the election of a Lieutenant Governor, who takes the place whenever the Governor ceases to act. The Lieutenant Governor presides over the Senate.

There are large numbers of other executive State officers, some of them appointive and some elective.

The Comptroller is the general bookkeeper for the State. He draws all warrants on the State Treasurer, and supervises the collection of all money due the State not expressly in charge of the head of some other department.

The Treasurer has charge of all money, bonds and valuable securities belonging to the State. He receives all money paid to the State, and pays it out on warrants from the Comptroller.

The Commissioner of the Land Office is the head of the State Land Department. He attends to disposing of the public lands, both by sale and lease. He and the Governor sign all patents to land.

The Attorney General is the legal adviser of all the executive officers of the State, and represents the State in all litigation in the higher courts.

The Superintendent of Public Instruction is the head of the Public School System, and supervises all public schools in the State.

The Secretary of State is the keeper of the records of the Governor's office and of the Legislature, and also has charge of the charters of all private corporations.

The Commissioner of Insurance, Statistics and History looks after all insurance companies doing business in the State, and gathers such statistics as are beneficial to the public, and keeps all records of historical interest.

The Commissioner of Agriculture has charge of all matters specially pertaining to farming and stock interests.

The Adjutant General is the Governor's Chief of Staff in military matters.

The Commissioners of Pardons investigate all applications for pardon, and recommend to the Governor the action they think he ought to take regarding them.

The State Health Officer watches the health of the State, and has general control of quarantine and other matters of health and sanitation.

The State Purchasing Agent buys the supplies needed by the State for its asylums and like institutions.

The State Revenue Agent assists in the collection of money due the State, principally by getting information as to persons who are seeking to evade payment of licenses.

The State Tax Commissioner's duty is to make suggestions as to methods of taxation, and also to assist in making assessments on railroads.

QUESTIONS.

I. 1. Name the Executive State officers who are elected. 2. By whom are they elected? By whom is the vote for these counted? What is meant by a return of these votes? 3. What State officer keeps these returns till the Legislature meets? What does he do with them, and who declares the result of the elections?

II. 1. What are the qualifications for Governor? 2. Name his chief executive duties. 3. Name his duties in connection with legislation. Compare the provisions of the State Constitution on subject of veto with those of the Federal Constitution on that subject. Note the differences. 4. What are the duties of the Lieutenant Governor?

III. 1. Give briefly the duties of each of the following officers: Comptroller, Commissioner General Land Office, Attorney General and Superintendent of Public Instruction.

IV. 1. Name the different State officers who are appointed by the Governor, and state briefly the duties of each.

CHAPTER XXIII.

THE JUDICIAL DEPARTMENT.

The Judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Criminal District Court of Galveston and Harris Counties shall continue with the district, jurisdiction and organization now existing by law until otherwise provided by law. The Legislature may establish such other courts as it may deem necessary, and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto. Article V, Section 1, Constitution of Texas.

This is the first section of the Judicial Article in our present Constitution. It names a number of courts upon which it confers all of the judicial power of the State. Then recognizing that the changes incident to the life and development of a people make frequent changes in their judicial systems desirable, and that such changes are difficult to make by Constitutional amendment, it confers upon the Legislature the power to create other courts if this should become necessary, and conform the jurisdiction of the enumerated courts to such changes.

This power has only been exercised by the creation of Corporation Courts for the larger cities, and as these do not have extensive jurisdiction they make little alteration in the judicial system announced in the Constitution.

It is more convenient in treating this system to reverse the order adopted in the Constitution, and to begin with the lowest courts.

County Commissioners Court. In each county there

is a Commissioners Court. This is composed of the County Judge, who is its presiding officer, and four County Commissioners, each of whom is selected from a subdivision of the county known as the Commissioner Precinct. This tribunal, though called a court, really has but little judicial power. It is practically the board of directors for the county, having charge of all its business affairs. It provides all public buildings, supervises the laying out and maintaining of county roads, and manages the county poor farm and hospital. It levies all county taxes, makes settlements with all persons having business with the county, and fills vacancies in all county offices except that of District Clerk. It divides the county into justice, commissioner, and election precincts, appoints officers to hold elections, and attends to many other local matters.

Justices Courts. Each county in the State is divided by the Commissioners Court of the county into not less than four nor more than eight precincts. In each of these precincts there is a Justice Court, and every two years a Justice of the Peace and a Constable are elected to hold this court. If any precinct contains a city of eight thousand or more inhabitants, it is given two Justices Courts, and two Justices are elected. The Justice of the Peace is the judge, and the Constable is the executive officer of the Justice Court. This court holds a session every month for the trial of civil cases, at a place within the precinct selected by the Commissioners Court. It can try criminal cases at any time and in any place within the precinct. This court has jurisdiction over all civil cases in which the matters in litigation are two hundred dollars or less, not including interest, and which are not expressly placed in the jurisdiction of some other court. It has jurisdiction over criminal cases in which

the punishment is by fine only, and the fine can not exceed two hundred dollars. A jury in a Justice Court consists of six men. Any party to a criminal case may have a jury on demand, and in a civil case on demand and payment of three dollars. Trials in the Justices Courts are informal, the pleadings being oral except in the very few instances enumerated in the statutes. The general rules of evidence apply to them. The Justice decides on the admission of evidence, but he does not charge the jury. The Justice keeps his own records. Cases tried in the Justices Courts can be appealed to the County Court if they involve as much as twenty dollars; otherwise the decision of the Justice Court is final.

County Courts. In every organized county there is a County Court. It is a court of record, and holds its sessions at the county-seat, meeting at least every three months, and oftener if the Commissioners Court so orders. This court has extensive jurisdiction, both as a regular trial court and as a court of probate.

In civil cases it has jurisdiction:

(1) Over all cases for more than \$200 and not over \$500 of which the District Courts are not given exclusive jurisdiction.

(2) It has concurrent jurisdiction with the District Courts of all suits of over \$500 and not over \$1000 of which the District Court is not given exclusive jurisdiction.

(3) It has power to issue all writs necessary to enforce its jurisdiction, and writs of mandamus and injunction when they involve money values within the amounts stated in Sections 1 and 2.

It has jurisdiction over all criminal offenses which are not punishable by death or imprisonment in the peniten-

tiary, or which do not involve wrong-doing by an officer in his official capacity.

Probate Jurisdiction. It has jurisdiction over all probate cases. These are proceedings in court for the purpose of preserving or distributing the estates of dead or insane persons, of minors, or of habitual drunkards. Under this power the County Court takes charge of such estates and appoints some suitable person to manage them under the supervision of the Court. Such person, in case of one deceased who left no will, is called an administrator. If there is a will, he is called an executor. If the estate is that of a living person, the party having charge is called a guardian. When necessary the Court can have such portions of such estates as are necessary sold to pay debts, or to support the minor or insane person. When the necessity for further action is passed, as when a minor becomes of age, or an insane person is restored, the estate is delivered to the owner. In case of a death of a property owner who leaves neither a will nor debts there is no need for the Probate Court to take charge of the estate. His heirs divide it among themselves. If, however, the deceased owed debts but leaves no will, then the Probate Court takes charge of the estate in order to protect the rights of both the creditors and of the family. In this case it will first provide reasonably for the family, then use enough of the property, if there be so much, to pay all debts, and then divide what is left among the members of the family according to the laws governing heirship. If the deceased leaves a will, it must be proved up and recognized by the Court. It is then placed on record, and the estate is managed by the one named in the will for that purpose, who is called an executor. All debts must be paid, and then the property is disposed of as the will directs.

Appellate Jurisdiction of County Courts. These Courts have appellate jurisdiction over all cases tried in the Justice Courts which involve twenty dollars or over. Cases brought into Court in this way are tried very informally, much as they were in the Justice Court. The decision of the County Court is final unless the amount involved is as much as one hundred dollars.

Officers of the County Court. The officers composing the County Court are the County Judge, the County Clerk, the Sheriff, and Jurors when they are in attendance. The County Judge must be a qualified voter, "well informed in the law of the State." He is elected by the voters of the county, holds his office for two years, and receives fees for his services. He is the presiding officer of the County Court and of the Commissioners Court of his county. The County Clerk issues all processes from the Court, and keeps all its records. He is elected by the voters of the county, holds office for two years, and is paid in fees.

Appeals From the County Court. All cases tried in the County Court in the exercise of its original jurisdiction, and those appealed from the Justice Court which involve as much as one hundred dollars, may be appealed. In civil cases the appeal goes to the Court of Civil Appeals, and in criminal cases to the Court of Criminal Appeals. All appeals in probate matters go to the District Court of the county.

District Courts. These are the most important trial courts in the system. They try all land suits, all divorce cases, all damage suits for slander or libel, all ordinary cases in which the amount in controversy is over \$1000. all trials of rights of property where it is valued at \$500 or over, all suits by the State for penalties, forfeitures or escheat, and all cases of contested election. They

have concurrent jurisdiction with the County Court in all civil suits where the amount is over \$500 and not over \$1000. They can issue writs of all kinds in all cases except writs of mandamus against heads of the State departments, and also with the possible exception of writs of mandamus and injunction where the amount involved is over \$200 and not over \$500. Some of the Courts of Civil Appeals have held that the jurisdiction of the County Courts is exclusive in cases last named. In criminal cases they have jurisdiction over all crimes which may be punished by death or confinement in the penitentiary, or which involve official misconduct. The Constitution, after mentioning all the foregoing matters, then declares that the District Courts are courts of general jurisdiction, and may try any and all suits jurisdiction over which is not expressly given to some other court.

Appellate Jurisdiction of District Courts. These Courts have very little appellate jurisdiction. It is limited to appeals from the County Courts in probate matters, and to one or possibly two matters pertaining to laying out roads by the County Commissioners Court.

Appeals From the District Courts. All cases tried in the District Courts may be appealed. In civil cases the appeal is to the Court of Civil Appeals, and in criminal to the Court of Criminal Appeals.

Terms of District Courts. The Constitution requires that a session of a District Court shall be held at the county-seat of every organized county in the State at least twice each year. The Legislature may provide for as many District Courts in a county and the holding of as many sessions as the public interests may require. There are statutes as to holding special terms of court which we need not consider.

Judicial Districts. District courts are held and pre-

sided over by District Judges. For convenience the State is divided into different judicial districts, in each of which a District Judge is elected. These districts are made by the Legislature, and are usually formed by combining a number of counties. Sometimes a single county will have sufficient business to occupy the whole time of a judge, and will constitute a district by itself. In a number of the larger counties one judge cannot attend to all such business, so that two or more District Courts are provided in each. For such cases there are a number of terms a year of such courts in each county. There are now 69, and the number is constantly added to as the population of the State increases and its business develops.

District Judges. There must be a District Judge for each district. He must be at least twenty-five years of age, a lawyer or judge, and a citizen of Texas, and must have resided in the district for two years next preceding his election. He is elected by the qualified voters of his district, holds office for four years, and receives a salary of \$3000 per year. He must reside in the district while he holds the office. Vacancies in the office are filled by appointment by the Governor with the approval of the Senate.

County Attorneys. In each county in the State a County Attorney is elected at each general election. His duty is to represent the State in all criminal cases in the county court, and in such of the justice courts as he can attend. In those districts in which there is no district attorney he also represents the State in the district court of his county. He is the legal adviser of the other county officers. Under some of the anti-trust statutes he is authorized to bring suits for penalties against cor-

porations supposed to have violated the law. He has no salary, but is paid by fees of office.

District Attorney. In a number of the judicial districts there is elected a District Attorney. His duty is to represent the State in all cases, criminal or civil, to which the State is a party in any of the district courts of his district, unless the law expressly makes it the duty of the Attorney General of the State or of the County Attorney to do so. He receives a small salary to cover traveling expenses, and also fees of office.

District Clerk. Each district court has a clerk called the District Clerk. He is elected by the voters of the county, holds his office for two years, and is paid by fees collected from persons having litigation in his court. He issues all the written orders of the court. These are called processes. He keeps a written minute of all that is done by the court, entering particularly all orders and judgments. He attends to drawing jurors, and administers oaths to the jury, witnesses, and others.

The Sheriff. The executive officers of the district courts are the Sheriff and his deputies and bailiffs. The Sheriff is elected by the people of the county, holds his office for two years, and is the head of all the executive officers of the county. He carries out all orders of the court, serves all processes, arresting criminals, citing parties to suits, and summoning all jurors and witnesses. He cares for and attends all juries while hearing cases, preserves order in the court and its neighborhood, and keeps the county jail. He is authorized to appoint deputies, who assist him in the performance of these duties. Bailiffs are special officers appointed by the judge to attend the court and wait upon it.

Indictments and Informations. In Texas no one can be tried for a felony until he has been indicted by a

grand jury. A felony is a criminal offense punishable by death or confinement in the penitentiary. Misdemeanors are offenses which are not felonies, and may be prosecuted either on indictment or on information. An indictment can be presented only by a grand jury. An information may be filed either by a district attorney or a county attorney. It must be based on an affidavit made by some credible person, charging the defendant with the crime alleged in the information.

Grand Juries and the Manner of Presenting Indictments. A Grand Jury is a body of men selected and organized by a district court for the purpose of inquiring into all alleged violations of the criminal law within the county. They consist of twelve qualified voters of good character, who own land within the State. Their sessions are secret, except that the district or county attorney may be present while they examine witnesses. After the evidence as to any accusation is all heard, the Grand Jury votes on the charge; and, if nine concur in the guilt of the accused, an indictment charging him with the offense is prepared by the prosecuting attorney and signed by the foreman of the jury. The grand jury then goes into open court and presents the indictment to the judge. It is filed by the clerk, who then issues a warrant to arrest the accused. Grand juries may indict persons for either felonies or misdemeanors. If an indictment is returned charging a misdemeanor over which the county court has jurisdiction, the district judge orders the district clerk to send the indictment to the county court, where it is filed and the defendant tried.

Procedure in the District and County Courts. All pleadings in civil suits must be in writing. In criminal cases the accusation must be made by information or by indictment. The production and hearing of all testi-

mony is regulated by the general rules of evidence. The judge decides all legal questions, and in civil cases also tries the facts, unless a jury is demanded and the fee paid. If there is a jury, he supervises its selection and gives to it in his charge the law of the case.

After the jury has heard the pleadings, the evidence, the argument of the attorneys, and the charge of the court, they retire to consider their verdict. They are kept from association with others while doing this. The verdict must be unanimous and reduced to writing. It is brought by the jury into open court, and read by the clerk. If it is regular, it is then entered upon record, and judgment rendered upon it. If it is irregular, the judge calls the jury's attention to the irregularity and they can correct it there, or can retire again and consider the case further. If the jury cannot agree after reasonable effort, they are discharged, and the case is tried again before another jury.

New Trials. When any case has been tried in any of the trial courts the losing party can make a motion for a new trial in that court. He must give his reasons for so doing in writing. The motion can be argued by the lawyers. If the judge thinks that a mistake has been made in the former trial, he can set the whole judgment aside, and retry the case. If he does not believe that the motion for a new trial should be granted, he overrules it, but the losing party usually can take the case to an appellate court.

Attorneys and Their Part in Trying Cases. The attorneys in a case prepare and file all pleadings, read them to the court, and argue all questions of law which arise on them. They introduce all evidence, question all witnesses, make objection to evidence offered by the opposing counsel, and argue the facts to the jury after the

evidence is all in. They prepare the judgment when the verdict is returned, make all motions in the case, and decide whether or not it shall be appealed, and if it is appealed they give proper notice of that fact and prepare the record and take out the transcript.

Preparation of a Case Upon Appeal. When a case is appealed it is the duty of the lawyer of the party taking the appeal to prepare and file with the clerk of the trial court a proper appeal bond, and an assignment of error setting out clearly the errors which he thinks the trial court has committed. The clerk then copies all the important papers on file in the case and the important orders and judgment made in it. This copy is called a transcript, and is delivered to the lawyer taking up the case, who files it in the appellate court. All subsequent proceedings in that trial are in the appellate court.

Courts of Civil Appeals. The State is now divided into six Supreme Judicial Districts, in each of which there is a Court of Civil Appeals. One of these courts sits annually at each of the following places: Galveston, Dallas, Fort Worth, Austin, San Antonio, and Texarkana. Each term begins the first Monday in October, and ends the last Saturday in June. Each court is composed of a Chief Justice and two Associate Justices. These Justices must be citizens of Texas, at least thirty years of age, and must have practiced law or been a judge of court for at least seven years before election. They are elected by the voters of their respective districts, hold office for six years, and receive a salary of \$3500 per year.

These courts have no original jurisdiction of any kind, and no criminal jurisdiction. They can try only civil cases appealed from the district or county courts. In all appeals coming from county courts, and from district

courts when the cases could have been tried in a county court, and in a number of other cases, the decisions of the Courts of Civil Appeals are final on both the law and the facts. Their decisions on questions of fact are final in all cases on which they pass.

Procedure in Courts of Civil Appeals. Cases are brought into this Court by filing in it the transcript of the record of the proceedings in the lower court. This transcript must be filed within ninety days after the appeal is perfected. When the transcript is received the clerk enters the case on the docket of the court in its regular order. The appellant, that is, the party taking the appeal, must prepare a brief of his case and file one copy in the lower court and at least three copies in the Court of Appeals. This brief consists of a short statement of the nature of the suit, of what took place in the trial in the lower court, and of the errors assigned. It further states the points of law on which the appellant relies to prove that error has been made, and under each point sets out the facts showing that the point actually arose and was decided against the appellant and that he did what he could to prevent the error. This statement is followed by a reference to the legal authorities—law books of different kinds—by which he hopes to sustain his point. The lawyer may also print his argument in his brief. Within a certain time after this brief by the appellant is filed the counsel for the other party, called the appellee, files a brief on his side. This is similar to the one for the appellant, except that in it the appellee tries to show that there was no error committed in the lower court. At the first meeting of the Court for the submission of cases after the time for filing briefs the case may be called and submitted to the Court for its decision either on the briefs filed, or on oral argument by

the attorneys in addition. No oral argument is permitted unless a brief has been filed. After the argument the court takes the case under advisement. The judges examine the transcript, the brief, and the authorities, consult over the points in the case, and come to a decision, with the reasons for it, and a judgment is entered accordingly. This judgment may dismiss the case for want of jurisdiction, may dismiss the appeal for good cause, may affirm the judgment of the trial court, or may set aside the judgment, and enter such judgment as the lower court should have done, or it may set aside the judgment and send the case back for a new trial in the lower court.

The party losing the case can make a motion for rehearing, accompanying it with a written argument; but no oral argument is made on such a motion unless requested by the Court. If the re-hearing is denied, in many cases a writ of error may be applied for to the Supreme Court.

The Supreme Court. There is one Supreme Court in Texas. It is composed of three judges, one called the Chief Justice, and the other two Associate Justices. These judges have the same qualifications as those for judges of the Courts of Civil Appeals, which have just been given. They are elected by the voters of the State, hold office for six years, and receive a salary of \$4000 per annum. The Court sits in Austin. Its sessions begin the first Monday in October of each year, and close the last Saturday in June of the succeeding year.

It is the highest State court in civil cases, but has no criminal jurisdiction. It has original jurisdiction to grant writs of mandamus and quo warranto to all State and district officers, except to the Governor. Its appellate jurisdiction is confined to designated classes of cases

which have been appealed to the Courts of Civil Appeals, and to questions arising in the Court of Appeals which are sent to it for answer.

Procedure in Supreme Court. Cases are not carried from the Court of Civil Appeals to the Supreme Court by appeal as matter of right. They can only be taken up by a writ of error granted by the Supreme Court upon examination of the case. The person decided against by the Court of Civil Appeals applies to the Supreme Court for a writ of error, setting out in his application the points upon which he thinks errors have been committed against him, and the reasons for his belief. The record is then sent up to the Supreme Court and, if the judges think that there is reasonable ground to believe that there has been error committed, they grant the writ of error and have the case brought up for revision.

After the case comes before the Court it is tried very much as in the Court of Civil Appeals.

This Court also has power to make rules for governing the procedure in it, and in all other courts of Texas. It has done this from time to time, and the simplicity and excellence of the Texas practice is due largely to this fact.

Court of Criminal Appeals. The Court of Criminal Appeals is the highest State court in criminal matters. It consists of three judges having the same qualifications, selected in the same way, holding office for the same time, and receiving the same salary as judges of the Supreme Court. This court holds sessions at three places: Tyler, Dallas, and Austin. It has no original and no civil jurisdiction. It hears appeals in criminal cases tried in the district and county courts. Its procedure is the same as in the Supreme Court.

Examining Trials. All justices of the peace and

county and district judges are authorized to act as magistrates and to hold examining trials. These are not final trials to determine the actual guilt or innocence of a person accused of crime, but preliminary hearings to ascertain whether or not there is probable reason to believe that the person under arrest is guilty. If so, they either hold him in confinement, or make him give bond so as to compel him to come before the proper court and stand trial on indictment or information, if one shall thereafter be preferred against him. As a rule no one can be compelled to submit to arrest and examination until a complaint has been made against him, in writing, and under oath, charging that the complainant has good reason to believe that the accused is guilty of a designated criminal offense. When such complaint is made the magistrate issues an order to the sheriff commanding him to arrest the accused and bring him before the magistrate at a time and place named. The trial is held by the magistrate without a jury. The accused is permitted, though not required, to make a written statement regarding the charge. Then witnesses are examined and their testimony is reduced to writing, signed by them, and filed by the magistrate. The State and the accused are each represented by attorneys. After the evidence is all received, and the arguments are heard, the magistrate announces his decision. If he thinks the testimony shows the probable guilt of the accused, he makes an order committing him to jail, or admitting his release on giving of security for his appearance, as the nature of the case may require.

All the papers in the case are then sent to the proper officer to be given to the next grand jury, and that body takes up the matter. If it finds an indictment, the accused must appear at the proper court and stand trial

on it. If he does not so appear, his bond is forfeited. If the grand jury does not present an indictment, the accused is discharged from attendance on the court. He may, however, be indicted at any other time, and be arrested again, for he has not been in jeopardy in the legal meaning of that term.

General Provisions. No judge in any court can sit in the trial of any case to which he or any one closely related to him is a party, or in which any matter as to which he has been employed as an attorney by either of the parties is directly involved. All judges are conservators of the peace. Judges of district and county courts and justices of the peace may act as committing magistrates.

RECAPITULATION.

The Judicial system of Texas consists of County Commissioners Courts, Justice Courts, County Courts, District Courts, Courts of Civil Appeals, a Supreme Court and a Court of Criminal Appeals, provided for in the Constitution.

The Legislature is authorized to make other courts, and to change the jurisdiction of the trial courts provided by the Constitution so as to conform to the new courts made by it.

The Commissioners Court is more of a business board for managing county affairs than a tribunal to try cases. It has four members, called County Commissioners, and is presided over by the County Judge.

The Justice Court is the lowest trial court. It hears small cases not involving more than \$200. There must be four in each county, and may be eight. They are held by Justices of the Peace.

The County Court is next in order above the Justices. They try civil cases of over \$200 and not over \$1000,

which are not expressly given to some other court. They try misdemeanors which do not involve official misconduct. They can grant writs of all kinds when necessary in a case already before them, and writs of injunction and mandamus where the amount involved is over \$200 and not over \$1,000. This court attends to all probate matters.

There is a County Court in each county. It holds at least four sessions each year. It is presided over by the County Judge, and attended by the County Attorney, the Sheriff, and County Clerk, jurors and lawyers.

The District Court is the highest court of original jurisdiction. It tries all land suits, divorce cases, and civil cases for defamation, contested elections, and suits by the State for forfeitures and penalties, and all other cases jurisdiction over which is not expressly given to some other court. It tries all felony cases, and all misdemeanors involving official misconduct. It hears appeals from the County Courts in probate matters.

The State is divided into a convenient number of districts, in each of which a district judge is elected. He holds at least two terms of his court each year at the county-seat of each county. The other officers of the court are the District or County Attorney, the Sheriff, the District Clerk, the Grand and Petit Jurors, and the lawyers.

The procedure in the County and District Courts is the same. The judge decides questions of law, and the jury, in criminal cases and where one is demanded in civil cases, questions of fact. In the trial of a case the pleadings are read, then the evidence is introduced, then the lawyers make their arguments. If there is no jury the judge then decides the case. If there is a jury, the judge gives them the law of the case in a charge and they find

their verdict. The verdict is entered of record and judgment entered on it. The losing party may move for new trial, and if that is denied, can appeal.

All felonies must be tried on indictment. An indictment is presented by a grand jury. Misdemeanors may be prosecuted by indictment or information.

The Courts of Civil Appeals have no original jurisdiction. They hear appeals from the county and district courts in civil cases. Many cases cannot be carried beyond this; others can. Their decisions are final on all matters of fact. There are six such courts sitting at different places.

The Supreme Court is the highest court in civil cases. It has a small share of original jurisdiction, but most of the cases it can hear come to it by writs of error from the Courts of Civil Appeals. Its most important function is to insure uniformity of decision on questions of civil law, and so give certainty and consistency to the law.

The Court of Criminal Appeals is the highest tribunal in criminal cases. It has no original or civil jurisdiction. It hears all appeals in criminal cases from the district and county courts.

QUESTIONS.

I. 1. What is the Judicial power of a State? 2. In whom is the Judicial power of Texas vested? 3. What is the jurisdiction of a court? 4. Can the Legislature change in any way the jurisdiction of the several courts created by the Constitution?

II. 1. What are County Commissioners Courts? Of whom are they composed, and over what matters do they have jurisdiction? 2. Answer same as to Justice Courts.

III. 1. How many County Courts are there in Texas? When and how often do such courts hold their sessions? 2. Name its civil jurisdiction. 3. Its criminal jurisdiction. 4. What is meant by probate jurisdiction? 5. What is its appellate jurisdiction? 6. What officers compose the County Court?

IV. 1. State the civil, the criminal, and the appellate jurisdiction of the District Courts? 2. To what courts do appeals from the District Courts go in civil cases? In criminal cases? 3. Where and how often must District Courts be held in each county? 4. Who presides over these courts? What are their qualifications, and how are they elected?

V. 1. Give briefly the duties of each of the following officers: County Attorneys, District Attorneys, District Clerks, and Sheriffs. 2. What is a grand jury, and what are its duties? What is an indictment? What is an information? What kind of officers must be prosecuted by indictment? What may be prosecuted either by indictment or information?

VI. 1. State briefly the procedure in the trial of a case in a county or district court. 2. When a new trial is refused what can the losing party do?

VII. 1. Who are attorneys? What part do they take in trying cases? 2. What is necessary to prepare a case for appeal from a District Court to a Court of Civil Appeals?

VIII. 1. Who constitutes a Court of Civil Appeals? How many such courts in Texas? What is their jurisdiction? In what cases are their decisions final? 2. Outline the procedure in these courts.

IX. 1. How many Supreme Courts in Texas? Of whom does it consist? When does it sit? What original jurisdiction has it? What appellate jurisdiction? 2. How are cases carried to this Court from the Court of Civil Appeals? How does the procedure in this Court compare with that in the Courts of Civil Appeals?

X. 1. How many Courts of Criminal Appeals are there? Of what does it consist? What jurisdiction has it? When does it sit? 2. Give briefly the purpose and manner of conducting examining trials.

CHAPTER XXIV.

RESTRICTIVE PROVISIONS OF THE CONSTITUTION OF TEXAS.

General Statement. In addition to the restrictive provisions of the Texas Constitution already considered in

connection with other topics, there are several which are too important to omit.

The following sections of the Bill of Rights are restrictions upon the State Government in all its departments and guarantees of the rights referred to therein to every citizen or inhabitant of the State.

The treatment given to similar provisions in the Federal Constitution in connection with the general doctrines announced in Part One make the general purposes and effect of these provisions readily apparent. A technical treatment of them would be manifestly inappropriate here.

Their importance must not be overlooked, however, for they set out a number of the most fundamental doctrines upon which our whole system of government and our personal liberties rest.

Liberty of Speech. The Bill of Rights provides:

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

As before stated, provisions of this sort do not give license, but guarantee liberty of speech. To indulge in license is to do as one himself desires; to enjoy liberty is to do that which proper regard for the equal rights of others permits. A government cannot abridge liberty of speech, but it is one of its sacred duties to prohibit license of speech. Every man is justly entitled to a reputation equal to his character. It is as much the duty of

the government to protect him in this right as in any other which he possesses. Laws which forbid the making of false and defamatory statements concerning others or their rights do not curtail liberty of speech.

Article I. Sec. 9. The people shall be secure in their persons, houses, papers, and possession from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

It is highly important that the security of the persons, houses, papers and possessions of private individuals shall be respected and left unmolested, unless public interests require some interference. This section is intended to prevent reckless and unnecessary seizures of one's person and property, or prying into his private affairs.

Sec. 10. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger.

This guarantees a speedy and public trial by a jury, in which the accused shall be informed as to the charge against him. If the case be a felony, the charge must be by indictment. If it is a misdemeanor, or an impeachment, or prosecution under military law, it may be by information of the kind prescribed by law in this particular case. In the trial he cannot be made to give evidence against himself; he may present his own case or

be heard by counsel, or both; he shall be present whenever evidence is given against him, and shall have the process of the court to enable him to compel the attendance of his witnesses.

Sec. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence in such manner as may be prescribed by law.

Bail is security given by one accused of crime to assure his presence at the time and place of trial. It entitles the accused to be at liberty before the case is tried, and is intended to guarantee that he will come to the trial. These provisions entitle every one accused of crime to give such security in a reasonable sum, unless the charge is one punishable by death and the proof is strong.

Sec. 12. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Habeas Corpus here means the same as in the Federal Constitution, and in connection with which it has been explained. This provision is much stronger than the similar one in the United States Constitution. It denies to all officers the right to suspend the writ, and requires speedy legislation to make it effective.

Sec. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

This provision as to jeopardy is substantially the same as in the Federal Constitution. The second clause is a more emphatic statement as to acquittals and their effect.

Sec. 15. The right of trial by jury shall remain inviolate. The

Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

This, in connection with the first sentence in Sec. 10, *supra*, guarantees the right of trial by jury in any case in any court if either party shall so desire. A jury is a body of disinterested men who decide the facts of a case on the evidence, under the rules of law governing it. The Legislature can regulate such trials, and have done so. They can in civil cases require the parties to do certain reasonable things before they can have a jury trial, such as making demand at a designated time and paying a reasonable amount of money, the expenses of the jury, or making affidavits of inability to do so. In criminal cases the accused is entitled to a jury whether he can pay or not, and in felony cases he cannot even waive having one.

Sec. 16. No bill of attainder, *ex post facto* law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Bills of attainder and *ex post facto* laws have been explained. A law impairing the obligation of a contract is one which makes the contract non-enforceable, or so changes the remedy for its breach as to take away reasonable means of enforcement. Laws having either of these effects are forbidden by this section.

Sec. 17. No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

The first of this section protects the citizen against improper use of the power of eminent domain. The last portion will be considered in connection with Section 26.

No person shall ever be imprisoned for debt.—Sec. 18, Bill of Rights.

This is a decided change from the old common law, and differs from the law in a number of States. It has been the law in Texas from the days of the Republic.

Sections 19, 20 and 21 are closely related. They are as follows:

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 20. No citizen shall be outlawed; nor shall any person be transported out of the State for any offense committed within the same.

Sec. 21. No conviction shall work corruption of blood, or forfeiture of estate; and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 19 requires due process of law, which has been explained. Outlawry is placing a person outside the protection of the law, so he cannot have or assert legal rights. Transportation is banishment; sending a person out of the country and requiring him to stay away, or sending him to some penal colony outside the State. Corruption of blood is a punishment which forfeits the property of the criminal to the public and renders his heirs incapable of inheriting from him. Forfeiture of estate is taking specific property or estate as a punishment for crime.

Bearing Arms. Section 23 Bill of Rights, provides:

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power by law to regulate the wearing of arms with a view to prevent crime.

This is a fundamental right. If the government could maintain a standing army, and private citizens were denied the privilege of keeping and bearing arms, the people would be at a great disadvantage. Military despotisms might destroy free government. It is to aid in pre-

venting this that this section is inserted. But here, as in every other matter, good government is arrived at only by a system of checks and balances. The good citizen must be allowed to keep and bear arms, but good order and the public peace require that the bully be prohibited from wearing them. Hence we find the express grant of authority "to regulate the wearing of arms with a view to prevent crimes."

Relation of the Military to the Civil Authorities. Sections 24 and 25 provide:

The military shall at all times be subordinate to the civil authority.

No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

These provisions indicate clearly the nature of our institutions. Governments are not organized in America for the purpose of military display or of waging war. They are to protect a peace-loving people in the orderly conduct of their religious, social, and business affairs. Armies and militia are not ends in themselves, but means by which to secure the rights and liberties of the people.

Monopolies. Section 26 of the Bill of Rights provides:

Perpetuities and monopolies are contrary to the genius of free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

This section and the kindred provisions of Sections 3 and 17 of the Bill of Rights declare that equality of right and opportunity is one of the fundamental principles on which our institutions rest, and announce that special privileges and advantages are not to be tolerated. No one should have the power to exclude his neighbor from equal opportunity in the battle of life.

Suspension of the Law. Section 28 of the Bill of Rights provides:

No power of suspending the laws in this State shall be exercised except by the Legislature.

The Legislature declares what the rules of conduct by which all are to be governed shall be, and it alone shall say when and upon whom these rules shall be operative.

Treason. Section 22 of the Bill of Rights provides:

Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

As treason is one of the most heinous crimes which can be committed against the State, and as it is never charged except in conditions of public unrest and excitement, the people thought it wise to anticipate any impulsive and rash action by the Legislature regarding it. Hence they define it in the Constitution, and also make two witnesses to the same overt act or a confession by the defendant in open court necessary to a conviction of this offense.

RECAPITULATION.

The Bill of Rights in the Texas Constitution includes many valuable guarantees to individuals. Many of these guarantees have been considered previously.

The State can pass no law abridging liberty of speech. It is its duty to prevent license in speech.

Seizures and searches of persons and property are forbidden except upon probable cause when the facts are sworn to.

Serious crimes can only be prosecuted by indictment, and misdemeanors by indictment or information.

The accused must be advised as to the accusation against him. He must have fair opportunity to be heard in open court, and cannot be compelled to incriminate himself.

Enlargement upon reasonable bail before final trial is guaranteed, except in capital cases with strong proof.

Habeas Corpus cannot be suspended.

No one can be tried or put in jeopardy twice for the same offense.

Trial by jury cannot be denied, but may be regulated.

Bills of attainder, *ex post facto* and retroactive laws and laws impairing the obligation of contracts are forbidden.

Payment must be made for property taken under power of eminent domain.

Due process of law is guaranteed to all persons.

Outlawry and "transportation" are forbidden.

Corruption of blood is forbidden.

Every person has the right to keep arms for the defense of himself, his family and his country. Wearing arms of such kinds and in such ways as to lead to and facilitate breaches of the public peace should be prohibited.

The military authorities are subordinate to the civil.

Monopolies and special privileges are contrary to our institutions, and cannot be lawfully permitted.

The Legislature has exclusive authority to suspend the laws.

No one can be convicted of treason except upon testimony of two witnesses to same act, or by confession in open court.

QUESTIONS.

I. 1. What is meant by the provisions as to searches and seizures? 2. How do the guarantees contained in the first two sentences of Section 10 of the Bill of Rights compare with the requirements as to the process of law in criminal cases? 3. What is the effect of the provisions of Sections 11 and 13 as to bail when taken together? 4. How do the provisions in Section 12 compare with those of the Federal Constitution on Habeas Corpus? 5.

What is the effect of the last sentence of Section 13 and of Section 19, when considered together. 6. Compare Section 14 with the similar provision in the Federal Constitution, and give their differences. 7. What is the combined effect of the first sentence of Section 10, and of Section 15? 8. What is a retroactive law, and one impairing the obligation of a contract? 9. How does Sec. 17 regulate the State's power of eminent domain? 10. What do Sections 20 and 21 mean? 11. What is the difference between liberty and license? Why is it the duty of government to regulate speech? How does just regulation of speech differ from abridgment of the right to freedom of speech? 12. Why is the citizen protected in his right to keep arms? Why is it necessary to regulate wearing arms? 13. Why should the military authorities be subordinate to the civil? 14. Who alone has the power of suspending the law in Texas? Why is this desirable? 15. Why is it proper to regulate prosecutions for treason by constitutional provisions?

CHAPTER XXV.

PUBLIC SCHOOLS OF TEXAS.

The Public School System: Historical References. One of the complaints made by the Texans against the Mexicans in the Declaration of Independence of 1836 was that they had failed to provide any system of public education. This idea was never lost to sight, and from time to time the Congress of the Republic or the Legislature of the State passed laws regarding it, establishing a system of schools and appropriating immense portions of the public lands for their support. These lands and their proceeds constitute the greater portion of the present public school fund.

The present Constitutional provisions are as follows:

ARTICLE VII. SECTION 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to es-

tablish and make suitable provisions for the support and maintenance of an efficient system of public free schools.

SEC. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads, or other corporations, of any nature whatsoever; one-half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

SEC. 3. One-fourth of the revenue derived from the State occupation taxes, and a poll tax of one dollar on every male inhabitant of this State between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools, and, in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount, not to exceed twenty cents on the one hundred dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this State for a period of not less than six months in each year; and the Legislature may also provide for the formation of school districts within all or any of the counties of this State, by general or special law, without the local notice required in other cases of special legislation, and may authorize an additional annual ad valorem tax to be levied and collected within such school districts for the further maintenance of public free schools and the erection of school buildings therein; *provided*, that two-thirds of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts.

SEC. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education

herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

SEC. 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding one per cent annually of the total value of the permanent school fund; such value to be ascertained by the Board of Education until otherwise provided by law; and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

SEC. 6. All lands heretofore or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the commissioner's court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal, shall be available fund.

SEC. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

SEC. 8. The Governor, Comptroller, and Secretary of State shall constitute a Board of Education, who shall distribute said funds to the several counties, and perform such other duties concerning public schools as may be prescribed by law.

SEC. 9. All lands heretofore granted for the benefit of the lunatic, blind, deaf and dumb, and orphan asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section four of this article.

SEC. 10. The Legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State, and styled "The University of Texas," for the promotion of literature and the arts and sciences, including an agricultural and mechanical department.

SEC. 11. In order to enable the Legislature to perform the duties set forth in the foregoing section, it is hereby declared that all lands and other property heretofore set apart and appropriated for the establishment and maintenance of "The University of Texas," together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, shall constitute and become a permanent university fund. And the same as realized and received into the treasury of the State (together with such sum belonging to the fund as may now be in the treasury) shall be invested in bonds of the State of Texas, if the same can be obtained; if not, then in United States bonds; and the interest accruing thereon shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing section; *provided*, that the one-tenth of the alternate sections of the lands granted to railroads, reserved by the State, which were set apart and appropriated to the establishment of "The University of Texas," by an act of the Legislature of February 11, 1858, entitled "An act to establish 'The University

of Texas,''' shall not be included in or constitute a part of the permanent university fund.

SEC. 12. The land herein set apart to the university fund shall be sold under such regulations, at such times and on such terms as may be provided by law; and the Legislature shall provide for the prompt collection, at maturity, of all debts due on account of university lands heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

SEC. 13. The Agricultural and Mechanical College of Texas, established by an act of the Legislature, passed April 17, 1871, located in the County of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanic arts and the natural sciences connected therewith. And the Legislature shall, at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said college in immediate and successful operation.

SEC. 14. The Legislature shall, also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the State, to be located by a vote of the people; *provided*, that no tax shall be levied and no money appropriated out of the general revenue, either for this purpose, or for the establishment and erection of the buildings of the University of Texas.

SEC. 15. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart and appropriated, for the endowment, maintenance and support of said university and its branches, one million acres of the unappropriated public domain of the State, to be designated and surveyed as may be provided by law; and said lands shall be sold under the same regulations and the proceeds invested in the same manner as is provided for the sale and investment of the permanent university fund; and the Legislature shall not have power to grant any relief to the purchasers of said lands.

Schools Constituting the Present System. The present system consist in part of the State University, the Agricultural and Mechanical College, the Sam Houston Nor-

mal Institute, the North Texas State Normal College, the Southwest Texas Normal School, the Texas Industrial Institute and College for the Education of White Girls of the State of Texas in the Arts and Sciences, and the Prairie View State Normal and Industrial College, all of which are maintained and controlled directly by the State through Boards designated for that purpose. High schools, supported in part by the State and in part from local sources, and Grammar or Primary Schools, some of which are supported entirely by the State and some by both State and local funds, complete the system. All high schools, grammar and primary schools, are controlled by local boards selected by the people directly interested in them.

School Funds. There are two kinds of school funds, called respectively the permanent and the available funds.

Permanent Fund. This consists of land, cash and public securities, and is the capital from which the available funds are procured. It is the policy of the State to make these funds as productive as can be done with absolute safety to the schools. The lands are leased while they remain in the hands of the State, and when prices are reasonably high they are sold. The principal remains part of the permanent funds, and the interest goes into the available fund. All cash coming into the permanent fund is required to be invested in United States, State of Texas, county, city or school district bonds. The law requires the Attorney General and Comptroller to examine into the validity and desirability of all securities in which it is proposed to invest this fund, and forbids the purchase unless they are strictly in conformity to law. Still fearing loss to the fund, the

State is required to guarantee the payment to this fund of all securities bought with it.

Available Fund. The available fund consists of the income from the permanent fund, of one-fourth of all occupation taxes collected by the State, of a poll-tax of one dollar on all male inhabitants of the State over twenty-one years and not over sixty years of age, and of the revenue derived from a State ad valorem tax, which cannot exceed twenty cents on the one hundred dollars' worth of property.

The funds belonging to the University and to the Agricultural and Mechanical College are each separated from those belonging to the common schools generally.

The University funds consist of lands and public securities, and those of the College of public securities only. Neither of these institutions has any share in the school funds raised either by poll or ad valorem tax. The available fund belonging to each is greatly inadequate to the support of the institution, and is supplemented every year by money appropriated by the Legislature from the general State revenues.

The other colleges mentioned above have no fund belonging to them, but are dependent entirely on Legislative appropriation.

The high schools and grammar schools share in the available State funds, and many of them in addition have funds raised by special taxes, voted by the people of their respective localities.

The University of Texas. The Constitution of Texas commands the Legislature to "establish, organize and provide for the maintenance, support and direction of a University of the first class, to be located by the vote of the people of this State, and styled 'The University of Texas,' for the promotion of literature, arts and sci-

ences, including an agricultural and mechanical department.”

By popular vote the “main” University was located at Austin, and the Medical Department at Galveston. The main University was opened in 1883, and now includes a department of Arts and Sciences, of Law, of Engineering and of Education. The medical branch was opened in 1891.

The general management of the University is vested in a Board of eight Regents, appointed by the Governor every two years, subject to approval of the Senate. The administrative work of the institution is performed by a president and his staff of assistants under general control of the Regents.

The permanent funds of the University, as stated, consist of lands, public bonds and land notes, and the available funds consist of the rental of its lands, interest on the securities held by it, and money appropriated from session to session by the Legislature.

The relations between the University and the common schools is one of mutual dependence and friendliness. In addition to the work done in regular sessions of the institution, in the Department of Education there is each summer maintained at the University a normal school for the benefit of teachers throughout the State.

The Agricultural and Mechanical College. This institution is maintained at College Station, in Brazos County. It was established in 1871. Its managing board consists of the Commissioner of Insurance, Statistics and History, and seven other members appointed by the Governor. It has a president in charge of its affairs, who acts under the general supervision of the board of directors.

It has a permanent fund invested in United States

bonds, but is to a large extent dependent on direct appropriations by the Legislature. The College is military in its organization, but gives special attention to agricultural and mechanical studies, including civil and mechanical engineering. In connection with it various experimental stations in agriculture are maintained, and practical tests are made as to the best soils, and breeds of stock, and similar matters of public interest.

Normal Institutes. The Sam Houston Normal Institute, located at Huntsville, is the oldest, having been founded and named in honor of General Sam Houston.

The North Texas State Normal College is at Denton. It was founded in 1899.

The Southwest Texas Normal is at San Marcos. It was established in 1901.

All of these schools are maintained by the State for the purpose mainly of training teachers for the public schools of the State. They are specially equipped, and the courses of instruction are arranged with especial reference to that.

The Texas Industrial Institute and College for the Education of White Girls of the State of Texas in the Arts and Sciences is located at Denton. Its purpose is clearly set out in its name, and its equipment and curriculum is designed to accomplish this.

Prairie View State Normal and Industrial College. This is the State college for colored youths, contemplated in Section 14, Art. VII, of the State Constitution. It is located at Prairie View, in Waller County, and is under the management of the Board of the Agricultural and Mechanical College. It maintains a normal school for training colored teachers, and also does work in industrial branches.

Common Schools Proper. The county is really the

territorial unit in the common school system, and the general provisions of the school law are based on it. The law, however, permits the formation of school districts which for some purposes are taken out of the operation of the general school laws and governed by regulations intended solely for them.

State Officers Connected with the Common Schools Proper. The State authorities having charge of common schools are the Board of Education, and the State Superintendent of Public Instruction. The State Board of Education consists of the Governor, the Secretary of State and the Comptroller. The Superintendent of Public Instruction is ex-officio Secretary of the Board. The principal functions of the Board are to set aside each year to each subdivision of the State entitled to share in the available school fund its proportionate part of such fund, and to hear and decide appeals taken from the decisions of the State Superintendent in school matters.

The State Superintendent is "charged with the administration of the school laws and the general superintending of the business relating to the public schools of the State." He hears and decides, subject to appeal to the State Board of Education, all controversies between the subordinate school officers and teachers. He prepares all forms to be used in connection with the public schools, and examines all accounts against the State school fund, his approval of every claim against that fund being prerequisite to drawing warrants on it by the Comptroller. He keeps the record of the State Board of Education and all others pertaining to State educational matters. He is the general adviser of all subordinate school officers, and in general looks after the common schools throughout the State, promoting their interests in all legitimate ways.

County Superintendent. In each county in the State having a scholastic population of 3,000 or over there is elected a county superintendent. He holds office two years and receives a salary of not less than \$900, nor more than \$1500, per annum, according to the number of school children within scholastic age in his county. In counties having less than 3,000 scholastic population the County Judge is *ex officio* Superintendent of Public Schools, unless by request of 25 per cent. of the voters of such a county the Commissioners Court provides for the election of a Superintendent. The County Superintendent has general supervision and control over all schools in his county not in independent school districts, particularly in the matters of the appointment of teachers and the expenditure of the school funds. He visits schools, holds county institutes and gives all his attention to the interests of this important work. He acts under and reports to the State Superintendent.

School Districts. Each county is divided by the Commissioners Court into convenient school districts, in which three school trustees are elected annually, who have charge of the schools within them. The funds for building and furnishing school houses and for maintaining the schools are furnished by the State out of the available school fund, which is distributed among the counties of the State on the basis of their scholastic population, and that falling to each county is distributed by the County Superintendent among the districts in the county. The number of schools in each district is determined by the trustees and the County School Superintendent. The money belonging to the district is divided among the several schools in proportion to the number of pupils enrolled for each.

The teachers are employed by the trustees. They can

receive such salaries as are agreed upon by the trustees, which must be within the limit allowed by law for teachers holding the grade certificate held by the particular teacher. These contracts are subject to approval by the County Superintendent.

The amount coming to each school from the State fund is not sufficient to maintain the schools for more than four to six months annually, and for this reason laws are made for creating independent districts and allowing the imposition of larger local taxes.

Special Taxes in School Districts. Any district, as laid out by the Commissioners Court, may incorporate into a school district and take charge of its public schools, and levy special school taxes, provided two-thirds of the voters residing in the district vote to do so. They may also vote to issue school-house bonds for the purpose of building school houses. These bonds are payable by taxes levied on the property in the district. The aggregate special tax levied in any district in any year shall not exceed twenty cents on the \$100 valuation. After voting such special taxes and issuing such bonds, school districts of this kind are still under the supervision of the County Superintendent.

Independent Districts Including Towns and Villages. Any unincorporated town or village, or one incorporated under the general laws of the State which has not assumed control of the public schools within it, is authorized to join with the inhabitants of the adjacent territory and with them incorporate for school purposes only. Such corporation must not exceed twenty-five square miles, and must be as nearly in a square as conveniently can be. Such incorporation may be effected by a majority vote; and the district becomes independent of the county school authorities. Such districts can levy special taxes and

issue bonds upon a two-thirds vote, as other independent districts.

Cities and Incorporated Towns as Independent School Districts. Any city or town incorporated under the laws of the State may assume control of the public schools within its territory by a majority vote. Such assumption makes the city or town an independent district. Such city or town may by vote of the taxpayers within its territory and participating in such election authorize the levy of a special school tax not to exceed fifty cents on the \$100 of property.

In all independent school districts established under the present law there are seven trustees who are elected by the people within the respective districts, and who have control of the public schools within the district free from supervision by the County School Superintendent.

Teachers. No one can be employed as a teacher in the common schools of the State who does not have a certificate obtained upon required work done in an approved university or college or upon examination by a properly constituted board. These certificates indicate different degrees of proficiency, and are of different values. They extend from the lowest, which entitles to teach only in the least advanced schools in the county in which they are issued, up to the permanent State certificates, which entitle to teach in any grade of State school in the State without reexamination. The salaries of teachers are regulated by contract with the trustees of the school, when approved by the County Superintendent, subject to the limits fixed by law as the maximum which may be paid to teachers holding certain classes of certificates.

The teachers in incorporated cities and towns which have assumed control of their schools and provided a city

superintendent of education and have voted special taxes, or otherwise maintain school nine months in the year, are under the control of the school trustees in such cities and towns, who make such regulations as to examinations, certificates and salaries as they think proper.

Scholastic Age. The regular scholastic age which under the general laws of the State entitles to free attendance in the schools is from 7 to 17 years, the age being that existing at the opening of the scholastic year.

Grading. As far as practicable the public schools are graded. Where this cannot be done the trustees and teachers make the best arrangement which the circumstances admit.

Sectarian Schools. No part of the public school fund can be lawfully used to support any sectarian school. Just what is meant by sectarian here is not clearly determined. Many years ago it was held that the word was not confined to the different denominations of Christians, but that the Christian religion itself is a sect, and the Bible cannot be taught in the public schools. Later one of the Courts of Civil Appeals has held that reading such portions of the Bible as the Sermon on the Mount and other similar texts in the public schools without comment, or repeating the Lord's prayer, did not violate the law.

Races. The Constitution and statutes both require that schools for whites and negroes shall be kept separate, but that each race shall be treated justly in the distribution of the funds. This injunction is observed. As the distribution of the school fund among the counties and school districts is made according to the number of pupils in them the negro children in fact get a much larger share of the fund in proportion to the tax paid by their parents than do the white children.

Eleemosynary Institutions. The State maintains a large number of eleemosynary institutions. The most important of these have been enumerated in the chapter on the Executive Department. They indicate clearly the policy of the State toward those citizens who are unfortunate and need assistance.

RECAPITULATION.

The public school system of Texas extends from the smallest county schools through all intermediate grades to the State University. It includes the primary schools, grammar schools, high schools, industrial schools, normal schools, the Agricultural and Mechanical College and the State University.

These are supported by revenue from bonds, land notes, rental of lands, and taxes.

These funds are of two kinds, the permanent and the available.

The Main State University is located at Austin, the Medical Department at Galveston. It is controlled by a Board of Regents. Its permanent funds are lands and United States bonds. Its available funds are interest on its securities and rentals from its lands, and money appropriated by the Legislature.

The Agricultural and Mechanical College is at College Station in Brazos County. It is controlled by a Board of Managers. Its permanent funds are in United States bonds. Its available funds are interest on these bonds, and appropriations.

The normal schools are under the control of the State Board of Education, and the Industrial Institute is under control of a separate Board. They are engaged principally in training teachers for the public schools of the State. They are supported by Legislative appropriation.

The Prairie View Normal is a college for colored people located in Washington County. It is under the same management as the Agricultural and Mechanical College.

The common schools proper are supported by the rentals of lands and interest on land notes, and special taxes required by the Constitution and levied by the Legislature.

The State Superintendent of Public Instruction has general control over all the common schools within the State.

In each county there is a Superintendent of Public Instruction, who has general control of all schools in his county which are not in independent districts.

The law authorizes the creation of independent school districts: first, districts in which there is no incorporated town or city; second, in districts in which there is an incorporated town or city which has not assumed control of the schools within it, and third, incorporated cities and towns which assume control of their schools.

By proper action these different districts can levy additional taxes for school purposes and issue bonds for school buildings.

Each independent district elects seven trustees, who have charge of all schools within it. In such districts as consist of or include an incorporated city or town the schools are not under the control of the County Superintendent.

Public schools cannot be sectarian.

Separate schools are maintained for the white and negro children.

QUESTIONS.

I. 1. What was one of the complaints made by the Texans against the Mexicans in the Declaration of Independence? 2. Name

the different schools and classes of schools in the present public school system. 3. What is the permanent school fund, and of what does it consist? 4. What is the available school fund, and of what does it consist? 5. Under what authority is the University of Texas maintained? What character of institution does the Constitution require it to be? Where is the Main University located? Where the Medical Branch? What departments are in the Main University? How is it supported? 6. Where is the Agricultural and Mechanical College located? What is the nature of the studies carried on there? How is it governed, and how maintained? 7. Name the different State Normal schools, and state the nature of the work done in them, and how they are supported. 8. What is the nature and purpose of the College for Girls at Denton? 9. What is the Prairie View State Normal and Industrial College? By whom is it managed?

II. 1. State briefly the powers and duties of the State Superintendent of Public Instruction. 2. State briefly the powers and duties of the County School Superintendent.

III. 1. Describe briefly the maintenance and operation of schools under the different systems: (a) In districts of ordinary kinds. (b) In districts in which special taxes are provided for but no independent district established. (c) In districts which are incorporated for school purposes only, and (d) In cities and towns which have assumed control of their schools.

IV. 1. Describe the Community system, comparing it with the District system.

V. 1. What evidence of efficiency must a person have before he can be employed as a teacher in the common schools? How is this evidence obtained? What is a county certificate? What a permanent State certificate? How are the salaries of teachers fixed? 2. Who controls the employment of teachers in cities which have assumed control of their schools?

VI. 1. What is the scholastic age in Texas? 2. Can sectarian schools be supported or assisted by the public school fund? 3. What provision is made for having separate schools for whites and negroes?

CHAPTER XXVI.

MISCELLANEOUS PROVISIONS OF THE TEXAS
CONSTITUTION.

Texas Land System. Article XIV of the Texas Constitution is as follows:

SECTION 1. There shall be one General Land Office in the State, which shall be at the seat of government, where all land titles which have emanated or may hereafter emanate from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the Legislature at the earliest practicable time to make the Land Office self-sustaining, and from time to time the Legislature may establish such subordinate offices as may be deemed necessary.

SEC. 2. All unsatisfied genuine land certificates barred by Section 4, Article 10, of the Constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the land office by the first day of January, 1875, are hereby revived. All unsatisfied genuine land certificates now in existence shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred; and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance, or be forever barred; *provided*, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented only upon vacant and unappropriated public domain, and not upon any land titled or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the General Land Office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

SEC. 3. The Legislature shall have no power to grant any of the lands of this State to any railway company except upon the following restrictions and conditions:

First. That there shall never be granted to any such corporation more than sixteen sections to the mile, and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second. That no land certificate shall be issued to such company until they have equipped, constructed and in running order at least ten miles of road, and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain, and liable to location and survey. The Legislature shall pass general laws only, to give effect to the provisions of this section.

SEC. 4. No certificate for land shall be sold at the Land Office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

SEC. 5. All lands heretofore or hereafter granted to railway companies, where the charter or law of the State required or shall hereafter require their alienation within a certain period, on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters and the laws under which the grants were made, are hereby declared forfeited to the State, and subject to pre-emption, location and survey, as other vacant lands. All lands heretofore granted to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the Attorney General in every instance, where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated, to forfeit such lands to the State, and if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey.

SEC. 6. To every head of a family without a homestead there shall be donated one hundred and sixty acres of public land, upon condition that he will select and locate said land, and occupy the same three years, and pay the office fees due thereon. To all single men of eighteen years of age and upwards shall be donated eighty acres of public land, upon the terms and conditions prescribed for heads of families.

SEC. 7. The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

Early Grants of Land. Under the Spanish and Mexican Governments many large and indefinite grants of land were made to private persons. In some instances it was exceedingly difficult to find the lands at all, and in most their exact location and boundaries were very uncertain. When Texas established her independence she succeeded to a very large area of public land. The title to all of this vested in her. The policy adopted by the Republic and continued by the State for many years was to use these lands in discharging her obligations to her soldiers and in encouraging the settling of the country. Every soldier was given a designated amount of land; every head of a family coming into Texas was allowed a large tract, and every single man, 18 years of age or over, a smaller one. To induce immigration on a larger scale contracts were entered into with various persons by which they were to bring in and locate settlers. The contractors and the settlers received land in designated amounts, to be located within certain portions of the State. Later the State offered large quantities of land for building railroads and opening the streams of Texas for navigation, and for other public improvements.

Land Certificates. The Government did not survey its lands and allot designated sections to these persons. Its policy was to issue to every person or corporation entitled to land a certificate stating that he or it was entitled to a designated amount to be selected out of any unappropriated public land within the Republic or State. These papers were called land certificates, and could be "located" by the owner by filing with the pub-

lic surveyor the certificate together with a general description of the land sought to be acquired under it, and by having him survey this land, so as to get its exact location and description, and then forwarding the certificate and the field notes of the land surveyed to the General Land Office. This "return" by the surveyor was examined in the General Land Office, and if found correct and not in conflict with any other claim, a patent was issued to the locator. Such patent is a grant by the State, through the Governor and the Commissioner of the General Land Office, of the State's title to the land described to the person or persons named in the patent. It is the highest evidence of the legal title to land.

Preemptions and Homesteads. In addition to the certificate method of parting with her lands the State passed laws authorizing actual settlers to acquire lands by preemption and by homestead claims. Under a preemption claim the head of a family could acquire a small tract without payment to the State, by living on it for a designated time. Under the homestead law he could acquire a larger tract, but was compelled both to live upon the land and to pay a small sum for it. This homestead right must be carefully distinguished from the homestead exemption rights to be hereafter considered.

School Lands. During all of the periods of her development Texas has reserved an immense amount of land for her public schools. In order to have this land surveyed she early adopted the plan of requiring all persons receiving certificates of land for public improvements to survey two sections for every one to which they were entitled. Every alternate section so surveyed was retained by the State as part of her school lands, and the other was patented to the owner of the certificate. The school lands thus surveyed amount to thousands of acres

and are frequently referred to simply as "alternate sections." These do not by any means comprise all the school lands of the State. In the Constitution of 1876, in addition to the alternate sections then surveyed, the school lands are declared to include "one-half of the public domain."

Sale of School Lands. The Constitution of 1876 also provides for the sale of all school lands under Legislative regulation. The Legislature has passed numerous and in some respects confusing laws on this subject. Under all of them the Commissioner of the Land Office has been assigned most onerous duties.

Conflict of Interests. In the days of the early settlements Texas was still the hunting ground of the Indian. Many of the tribes were hostile. So it is matter for little surprise that much land was located with instruments in the safer shelter of the surveyor's office. Conflicts in surveys were inevitable, and much confusion resulted. These controversies found their way through the numerous surveyors' offices of the State to the General Land Office and to the Commissioner. Many of them ultimately were referred to the courts for adjustment. In later years the difficulties arising between different claimants to land are not so frequently dependent on location or boundary of the land as on the merits of the claims themselves.

Records. Land is the most enduring property man can have, and it is absolutely essential to the order and development of the community that the evidences of title to it shall be enduring and securely kept. Hence a large force of men is constantly engaged in preparing and caring for a permanent record of everything done in the Land Office.

Registration of Land Titles. The foregoing gives very

briefly the system by which the State parts with her title to public lands. After land becomes private property the public is still very much interested in it, and the security of its owners. For this reason all conveyances of land are required to be made in writing. They should be acknowledged or proved up before a proper officer as convenient evidence of their genuineness. The State also provides for copying all such deeds in a public record kept in each county by the County Clerk. When a deed is left with the County Clerk to be recorded it is filed, and every one dealing with the land included in it is regarded in law as knowing all that he could find out if he actually read the deed.

State Taxation. Article VIII of the Constitution provides:

SECTION 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; *provided*, that two hundred and fifty dollars worth of household and kitchen furniture belonging to each family in the State shall be exempt from taxation, *and provided further*, that the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business.

SECTION 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or cor-

porate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes (and the necessary furniture of all schools), and institutions of purely public charity, and all laws exempting property from taxation, other than the property above mentioned, shall be void.

SECTION 3. Taxes shall be levied and collected by general laws and for public purposes only.

SECTION 4. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party.

SEC. 5. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

SEC. 6. No money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriation to carry on the government until the assemblage of the sixteenth Legislature.

SEC. 7. The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the treasury; and shall make it penal for any person or persons to borrow, withhold, or in any manner to divert from its purpose, any special fund, or any part thereof.

SEC. 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the road-bed and fixtures as shall be in each county. The rolling-stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the Comptroller in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

SEC. 9. The State tax on property, exclusive of the tax neces-

sary to pay the public debt and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city, or town shall levy more than twenty-five cents for city or county purposes, and not exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment, September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, water works, and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; *provided*, that a majority of the qualified property tax paying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of public roads and highways without the local notice required for special or local laws.

SEC. 10. The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town, from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each House of the Legislature.

SEC. 11. All property, whether owned by persons or corporations, shall be assessed for taxation and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

SEC. 12. All property subject to taxation in, and owned by residents of unorganized counties, shall be assessed and the taxes thereon paid in the counties to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed and the taxes thereon collected at the office of the Comptroller of the State.

SEC. 13. Provision shall be made by the first Legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale of all lands and other property upon which the taxes have not been paid, and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; *provided*, that the former owner shall, within two years from date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land.

SEC. 14. There shall be elected by the qualified electors of each county, at the same time and under the same law regulating the election of State and county officers, an Assessor of Taxes, who shall hold his office for two years and until his successor is elected and qualified.

SEC. 15. The annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent tax-payer shall be liable to seizure and sale for the payment of all taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

SEC. 16. The sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor. But in counties having ten thousand inhabitants, to be determined by the last preceding census of the United States, a collector of taxes shall be elected, to hold office for two years and until his successor shall be elected and qualified.

SEC. 17. The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution.

SEC. 18. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation (the county commissioners court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

SECTION 19. Farm products in the hands of the producer and family supplies for home and farm use are exempt from all taxa-

tion until otherwise directed by a two-thirds vote of all the members elect of both Houses of the Legislature.

ARTICLE III. SECTION 48. The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State;

The erection and repairs of public buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt, and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate;

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas;

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employes of the State Government, and all incidental expenses connected therewith.

The support of the Blind Asylum, the Deaf and Dumb Asylum, and the Insane Asylum; the State cemetery and the public grounds of the State;

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.

Effect of these Provisions. The subject of taxation and revenue receive marked attention in the Constitution of Texas. A good portion of the provisions are express grants of power, but more of them consist in limitations.

These must be taken in connection with the limitations in the United States Constitution denying to the States the right to levy imposts or duties on imports or exports, or on tonnage. There is no express restriction upon the States as to taxing the agencies and operations of the Federal Government; but as the power of taxation only extends to those things, persons, subjects and activities which are within the jurisdiction of the Government imposing the tax, and since the States have no

jurisdiction over the Federal Government and its agencies, there is no need of further limitation as to these.

The positive requirements of the State Constitution as to taxation are as follows:

First. Taxation must be equal and uniform.

Second. Property must be taxed according to its value as ascertained by law.

Third. The Legislature may impose poll taxes.

Fourth. Also occupation taxes, except upon mechanical or agricultural pursuits.

Fifth. Taxes must be levied and collected by general laws.

Sixth. They can only be imposed for public purposes, which embrace the matters enumerated in Article III, Section 48, quoted above.

Seventh. For these public purposes the taxes and revenue raised thereby shall not exceed an amount sufficient for the economical administration of the Government.

Eighth. The State ad valorem tax, exclusive of that to pay the public debt existing when the Constitution was adopted and for public schools, shall not exceed thirty-five cents on the one hundred dollars.

Ninth. The power to tax private corporations and their property cannot be surrendered by the State.

Tenth. Farm products while still in hands of the producer, and family supplies for home and farm use, and two hundred and fifty dollars worth of household furniture of each family, is exempt from taxation.

Eleventh. The Legislature cannot relieve the inhabitants of any community of State and county taxes, except in cases of great public calamity, and in such cases only by vote of two-thirds of each House.

Twelfth. In all organized counties taxes must be paid in the county where the property is assessed and situated,

though if the owner is a non-resident the Legislature may authorize payment to the Comptroller. In unorganized counties the taxes must be assessed and paid in the counties to which the unorganized counties are attached for judicial purposes.

Thirteenth. Assessments on land are a lien upon it.

Fourteenth. The Legislature is required to pass laws providing for the sale of property for taxes due on it.

Fifteenth. Laws intended to equalize the values of all property subject to taxation shall be passed.

State Revenues and Debts. Article III:

SECTION 49. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue shall never exceed in the aggregate at any one time two hundred thousand dollars.

SECTION 50. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other; or to pledge the credit of the State, in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporations whatsoever.

SECTION 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporations whatsoever; *provided*, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1, 1880, and who are either over sixty years of age or whose disability is the proximate result of actual service in the Confederate army for a period of at least three months, their widows in indigent circumstances who have never remarried, and who have been *bona fide* residents of the State of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1880; *provided*, said aid shall not exceed eight dollars per month; and *provided*, further, that no appropriation shall ever be made for the purpose hereinbefore specified

in excess of five hundred thousand dollars for any one year. And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, under such regulations and limitations as may be provided by law; *provided*, the grant of aid to said home shall not exceed one hundred thousand dollars for any one year; and no inmate of said home shall be entitled to any other aid from the State; and *provided*, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity.

SECTION 52. The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State, to lend its credit or to grant public money or thing of value, in aid of or to any individual, association or corporation whatsoever; or to become a stockholder in such corporation, association or company; *provided*, however, that under legislative provision any county, any political subdivisions of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include towns, villages, or municipal corporations, upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes, to-wit:

(a) The improvement of rivers, creeks and streams to prevent over-flows, and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.

SECTION 53. The Legislature shall have no power to grant, or

to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract made without authority of law.

SECTION 54. The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in any wise change the tenor or meaning or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

SECTION 55. The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any incorporation or individual to this State, or to any county, or other municipal corporation therein.

Taken together these sections prevent diversion of public funds from the public purpose for which they were provided, and limit the powers of the Legislature to create debt. They absolutely prohibit lending the State's credit or the guarantee by it of debts due by others, whether natural persons or corporations. They also forbid the Legislature to release claims due to the State or securities held by it against any railroad company.

They further forbid the Legislature to authorize any political subdivision of the State; either to become surety for any private person, or association of persons, or corporation, or to give away any public money or thing of value.

This provision as to becoming security has this exception. By express action the Legislature may authorize a subdivision of the State to lend its credit in making enumerated improvements for the benefit of the public, provided the indebtedness is authorized by majority vote

of two-thirds of the voters within the district who pay taxes on property therein, and does not exceed one-fourth of the value of real property of the district, and is within the limits of indebtedness contained in other portions of the Constitution.

Neither can the Legislature authorize any county or municipal authority to pay extra for services properly rendered it, nor to pay anything for services rendered under unauthorized agreements, or to release or discharge any one from the payment of any indebtedness owed to the State or a county or city or town.

Municipal Corporations. Article XI of the Constitution:

SECTION 1. The several counties of this State are hereby recognized as legal subdivisions of the State.

SEC. 2. The construction of jails, court houses and bridges, and the establishment of county poor-houses and farms, and the laying out, construction and repairing of county roads, shall be provided for by general laws.

SEC. 3. No county, city or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in any wise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

SEC. 4. Cities and towns having a population of ten thousand inhabitants or less, may be chartered alone by general law. They may levy, assess and collect an annual tax to defray the current expenses of their local government, but such tax shall never exceed, for any one year, one-fourth of one per cent, and shall be collectible only in current money. And all license and occupation tax levied, and all fines, forfeitures, penalties and other dues accruing to cities and towns, shall be collectable only in current money.

SEC. 5. Cities having more than ten thousand inhabitants may have their charters granted or amended by special act of the Legislature, and may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful,

for any one year, which shall exceed two and one-half per cent of the taxable property of such city; and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon.

SEC. 6. Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

SEC. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized, upon a vote of two-thirds of the tax-payers therein (to be ascertained as may be provided by law), to levy and collect such tax for construction of sea walls, breakwaters or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for.

SEC. 8. The counties and cities on the gulf coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is especially authorized to aid, by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of sea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed or to be constructed in any locality.

SEC. 9. The property of counties, cities and towns owned and held only for public purposes, such as public buildings and the sites thereof, fire engines and the furniture thereof, and all property used or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the

public, shall be exempt from forced sale and from taxation; *provided*, nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens now existing.

SEC. 10. The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if, at an election held for that purpose, two-thirds of the tax-payers of such city or town shall vote for such tax.

Counties. Counties are created by the Legislature. They are recognized as political subdivisions of the State. The area required for counties under different circumstances are given in the Constitution. Each organized county has its legally required officers and a county-seat, where all offices of the county officers must be kept, and where all district and county courts for the county must be held. It is out of the power of the Legislature to change this.

Revenue. Counties are authorized to levy ad valorem, poll, and occupation taxes respectively, not to exceed one-half those levied by the State, for current expenses and future needs. Larger levies may be made to pay any debts created before 1875 which may be still unpaid.

Counties cannot take shares of stock in corporations nor loan their credit. They cannot release or extinguish any debts due to them, though they are authorized to sell judgments against insolvent debtors. They cannot pay fees or grant extra compensation for services rendered them by any public officer.

There are a number of county officers, but the most important of these have already been considered in other connections.

Cities and Towns. There are two ways of creating cities and towns in Texas. One is by special grant by

the Legislature of a charter applying only to the one city; the other is by general law passed by the Legislature under which the people of any territory having sufficient population can become incorporated. Communities having 10,000 or more inhabitants can be chartered by either method; communities having less than that number only by the latter. In either case the city or town has only such powers and rights as the law creating it gives to it.

City Government. City and town governments are largely executive, and have but little legislative or judicial authority. The chief executive of a city is called the Mayor, the head of the constabulary department is usually, called the City Marshal, and the others are policemen. The city business affairs are managed largely by the Aldermen or Councilmen and the Mayor. Not infrequently in larger cities there are various Boards or Commissioners, having charge of different public utilities, as Commissioners for water, or light, etc. There are also city assessors and collectors of taxes, city treasurers, city clerks, etc. It has become quite customary in later years to have a city health department, with appropriate officers, whose duty it is to look after the general sanitary conditions and to assist the State and county officers in caring for and protecting the public health.

The small share of legislative authority which a city has is exercised by its Board of Aldermen, or City Council, as this Board is sometimes called. The matters upon which they may legislate are such as involve the well-being and good order of the particular locality, known as police regulations. They can prescribe only light penalties. In these matters the Mayor has the power of veto, similar to that exercised by the Governor in State legislation. Laws created by the Council are called or-

dinances. The judicial power of the city is vested in a Mayor's or Recorder's Court. It can try only criminal charges for violation of city ordinances.

City and town governments are, strictly speaking, governments of delegated authority. A city can pass no ordinance, enter into no business transaction, nor lawfully perform any act which it is not expressly or impliedly authorized to do by its charter.

There are also express limitations on the powers of cities and towns contained in the Constitution. The ad valorem tax imposed by cities or towns chartered under general laws cannot exceed one-fourth of one per cent annually.

Cities chartered by special act may levy such taxes as are authorized by the charter, provided the ad valorem city taxes for no year shall exceed two and one-half per cent on the taxable values of the city.

Cities may contract debts and issue bonds for proper public purposes, designated in their charter. But no such debt shall be created unless at the time provision is made for paying all interest annually and for raising a sinking fund of at least two (2) per cent of the principal.

Private Corporations. Article XII of the Constitution is as follows:

SECTION 1. No private corporation shall be created except by general laws.

SECTION 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

SECTION 3. The right to authorize and regulate freights, tolls, wharfage or fares, levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and never shall be relinquished or abandoned

by the State, but shall always be under legislative control and depend upon legislative authority.

SECTION 4. The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General and district or county attorneys, in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares, or tolls, for the use of property devoted to the public; unless the same shall have been specially authorized by law.

SECTION 5. All laws granting the right to demand and collect freights, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the Legislature.

SECTION 6. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void.

SECTION 7. Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute of this State or of the Republic of Texas.

The last two clauses of Section 17 and the first clause of Section 26 of the Bill of Rights are as follows:

SECTION 17. * * * and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

SECTION 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed. * * *

A private corporation is an agency, formed by the State and the persons who go into the corporation, for the purpose of carrying on some enterprise, usually a business, in which the State has a general and the individuals a special interest.

Individuals cannot form corporations without authority from the State, and the State cannot form private corporations without the cooperation of the individuals interested.

The method by which private corporations are now formed in Texas is regulated by a general law known

as a general enabling act. This law states for what purposes corporations may be formed, what must be done to bring one into being, what powers and rights it shall have, and what duties it shall owe. The Legislature has the power to alter or repeal charters at any time, If it alters a charter in any material respect, it cannot compel the corporation to go on under the amended charter, but it can compel it to stop business as a corporation and wind up its affairs. The right to regulate charges for use of highways, landings, wharves, bridges and ferries is expressly reserved. All corporations are forbidden to issue stocks or bonds except for value received therefor. It is made the duty of the Legislature to provide proper methods for forfeiture of charters of corporations for violations of law.

Under the present law corporations may be created to carry on almost any kind of private business, though it must always be remembered that the purposes contained in the statute are the only ones for which corporations can be formed.

Railroads and Railroad Companies. Article X of the Constitution provides:

SECTION 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty; without delay or discrimination, under such regulations as shall be prescribed by law.

SEC. 2. Railroads heretofore constructed or which may hereafter be constructed in this State are hereby declared public highways and railroad companies common carriers. The Legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates

of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and for the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.

SEC. 3. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the president or superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this section.

SEC. 4. The rolling-stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

SEC. 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

SEC. 6. No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise with

any railroad company organized under the laws of any other State or of the United States.

SECTION 7. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town or village, or upon any public highway without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

SECTION 8. No railroad corporation in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

SECTION 9. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county-seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; *provided*, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

In connection with these provisions we must keep in mind Sections 17 and 26 of the Bill of Rights, and Sections 4 and 5 of Article XII, given above, under the head of Private Corporations.

The maintenance of public highways is one of the chief concerns of government. Opportunity to go from one place to another is essential to the life of society. Public roads for travel in private conveyances are maintained by the counties and cities, but these do not suffice. The commerce of the world needs larger facilities for transportation. Steamboats and railroads are the most effective means yet devised. Hence, the State deals with railroads as public highways, and railroad companies as common carriers, granting to them special privileges and laying upon them special restrictions. It gives to these companies the power to exercise the right of eminent domain, under which to obtain rights of way

for their trains, and then requires them to furnish reasonably efficient service at reasonable rates of charge, and without unjust discrimination among persons or places.

This was attempted by general legislation, but the results were not fully satisfactory to the people. They desired a more efficient means, and so they in 1890 amended the second section of the Article just quoted by adding the words, "and to the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies, invested with such powers as may be deemed adequate and advisable." This gave the Legislature very large discretion in the matter of railroad regulation. In its first session thereafter it created the State Railroad Commission.

The State Railroad Commission. This is a body composed of three officers known as Railroad Commissioners, who are elected by the voters of the State, hold office for six years, and receive an annual salary of four thousand dollars each.

Their duties, stated very generally, are as follows:

First. It is a bureau of information as to the railroads within the State. In this line of its work it obtains, and makes a matter of permanent record, complete information as to all railroads in Texas. This information covers the location of the lines, the original cost of construction, their present condition and value; all facts concerning rolling-stock and equipment, the manner and expense of operation, including all running arrangements with other lines; all stocks and bonds and other debts outstanding; the volume of freight and passenger business done, and the charges, general and special, made for service, and all other matters which prop-

erly enter into and form part of the business and operation of the roads.

Second. It has authority to make such rules and regulations as to the conduct of their business by railroads as shall "regulate railroad freight and passenger tariffs, correct abuses and prevent unjust discrimination and extortion on the different railroads in this State." This power is clearly legislative in its nature. Under it the Commission fixes freight charges, requires the building and maintenance of stations, regulates railroad crossings, and makes a great many other rules relating to the business and operation of the roads.

Third. It investigates alleged abuses or wrongdoing by the roads, and adjudges penalties against them if they are found guilty. It cannot enforce these penalties, but if they are not paid it can order suit brought in the proper court on the matter. Their conclusion is taken as making out the case against the road, and entitling the State to judgment, unless the railroad can produce testimony to show its injustice or illegality.

It is evident that these powers are very great, and that they embrace matters belonging to each of the departments of Government which are usually required to be kept separate. This grouping of powers in the Commission is based on the authority conferred upon the Legislature in the concluding portion of Section 2, Article X, as amended, quoted above.

Removal From Office: Impeachment of High Crimes and Misdemeanors. Charges may be preferred by the House of Representatives before the Senate against any elective State executive officer, or against any judge of a district or higher appellate court. Such charges are tried by the Senate. It requires a vote of two-thirds of the Senators present to convict. The punishment is

removal from office and future disqualification to hold office. Persons convicted are still subject to indictment and trial. During the impeachment the officer is suspended from office.

The judges of the appellate courts and of the district courts are also subject to removal by the Governor, "for willful neglect of duty, incompetency, habitual drunkenness, oppression in office, and other reasonable cause which shall not be sufficient ground for impeachment," when convicted thereof by a two-thirds vote of each House. In such proceeding the accused is entitled to be advised of the charges against him, to offer testimony, and to argue his case, and record of the whole proceeding is made.

A district judge is further subject to removal by the Supreme Court upon conviction by that tribunal of incompetency, partiality, oppression, or other official misconduct, or where his habits are such as to unfit him for the office, or for neglect of official duty. The charge in such case must be made under oath by at least ten lawyers who are licensed to practice in the Supreme Court, and who actually practice in the district court presided over by the accused judge. The accused is entitled to trial on the charge.

The Legislature is authorized to provide for removal of other officers by general law. Several statutes have been enacted under this. Most, if not all, of these provide for removal by the district court after regular trial.

Amendments to the Constitution. Amendments to the Constitution are prepared by the Legislature and by it submitted to the people for adoption or rejection. Before any amendment can be submitted to the people it must pass each House by a vote of two-thirds, taken by yeas and nays and entered on the Journal. When they

are submitted to the popular vote they are published at length in numerous newspapers through the State. They may be submitted at a special election called for that purpose, but are frequently voted on at a general election. A majority of the votes cast regarding an amendment is necessary to its adoption.

There are several other Constitutional provisions of importance, but they can be more easily considered in connection with the subjects to which they respectively relate, and are taken up in Part V, under Law.

RECAPITULATION.

Texas can tax every thing and person within its jurisdiction, in any wise it sees fit, unless forbidden by the Federal Constitution.

All taxes must be equal and uniform. Ad valorem taxes must be in proportion to the value of the thing taxed. Taxes can only be imposed for public purposes, and by general laws.

General ad valorem taxes are limited to thirty-five cents on the one hundred dollars.

Public funds can only be used for public purposes.

Counties are the most important subdivisions of the State. They are made for the convenience of the people of the whole State in carrying out the State laws. They are supported by taxes levied by the commissioners court within the limits fixed by law.

Cities and towns are political subdivisions made for the convenience of persons living within them. They are incorporated by the State under general enabling acts. If a city has 10,000 inhabitants or over, it may be given a special charter.

A private corporation is an agency created by the State and private persons for the purpose of carrying out

designated purposes. They are now created by general enabling acts. The State may amend or repeal charters granted by it under the present corporation laws.

Railroads in Texas are public highways, and railroad companies are common carriers. Such companies are subjected to special control by the State on account of the public nature of their business and the special advantages allowed them.

The special method adopted by Texas for the regulation of railroad companies is the State Railroad Commission. This consists of three Commissioners elected by the people of the State, and it has authority to ascertain all facts concerning railroads within Texas which are of interest to the public; to fix railroad charges, and generally to supervise and regulate railroad operation in regard to State traffic.

Impeachment is the general method provided in the Constitution for removal of State elective officers and judges of the district and higher courts.

Judges of the appellate and district courts may also be removed by address.

The Constitution may be amended by the Legislature submitting amendments to the vote of the people, and a majority of the vote of the people being in favor of the amendment.

QUESTIONS.

I. 1. To what uses did Texas put her public lands in the beginning of her history? 2. What is a land certificate, and how was particular land acquired under it? 3. What was necessary to acquire lands under the preemption laws? Under the law as to making homes on public lands? 4. How did Texas have her school lands surveyed? Can school lands be sold? 5. Why is it necessary to have records of land titles? What provision is made for keeping such records?

II. 1. Give the substance of the Constitutional provisions

as to taxation as summarized in the text. 2. State generally the effect of the Constitutional provisions as to state revenues and debts due the State and counties.

III. 1. What sources of revenue have counties? What limitations are there on the county's power to go in debt? 2. How may cities and towns be created in Texas? By whom are the business affairs of a city managed? Why do cities need very small legislative powers? What are local laws made by a city called? How are the revenues of cities provided? Are there any limits on the amount of taxes a city may levy?

IV. 1. What is a private corporation? 2. How may they be formed? 3. What powers have they? 4. What control has the Legislature over them?

V. 1. Why are public highways necessary to the life of a community? 2. What is the need of railroads? 3. On what principle is the State justified in granting special privileges to railroad companies and exercising special control over them? 4. What is the State Railroad Commission? 5. Summarize the powers and duties of the Railroad Commission.

VI. 1. Who are subject to impeachment? 2. What is an address, and who is subject to that? 3. By what other method may a district judge be removed from office?

VII. 1. How may the Constitution be amended?

THOUGHT QUESTIONS FOR REVIEW.

I.

1. Over what matters do new States coming into the Union have jurisdiction?

II.

1. Why is it necessary to have minor political subdivisions of the States? Point out the differences in the relations between a State and its counties and those between the Federal Government and a State in the Union.

2. In what respects do counties and cities differ from each other?

III.

1. What causes led to the Texas Annexation?

2. Why was it necessary for the Convention of 1836 to provide two plans of government?

3. Give briefly the principal characteristics of the government of the Republic of Texas.

IV.

1. What motives prompted the adoption of the Common Law?
2. What difficulties were there with regard to adopting it in its entirety?
3. How did the Texans meet the situation?

V.

1. What changes necessarily took place in the sovereignty of the people of Texas and in their government, when she ceased to be a Republic and became a State in the Union?

VI.

1. How does the prevalence of restrictive provisions in the Constitution of 1876 show the influence of the Reconstruction experiences of the people?

VII.

1. What is there in the Constitution of Texas that shows that Texas is a Christian State?
2. What is there in it that guarantees religious freedom to each individual?
3. What is there that teaches of equality of right and opportunity?

VIII.

1. What is the highest political right?
2. How can you reconcile the statement that ours is a government of, by and for the people, with the fact that an individual's right to vote is derived from the sovereign, and that the privilege is conferred upon only a minority of the people?
3. What are the advantages of the ballot as a means of voting?

IX.

1. Why must different rules be applied to acts of a State Legislature and to acts of Congress in determining their constitutionality?
2. What are the advantages of having two Houses in the State Legislature?
3. Why does the Senate alone pass upon the fitness of appointments made by the Governor?
4. Why should the bills for raising revenue originate in the House of Representatives?
5. What is the advantage of having a bill read three times before its passage?

6. What advantages to the public arise from the Governor's veto power?

X.

1. What are the differences in the relations between the Governors and the heads of the executive departments of the State on the one hand and the President and his Cabinet on the other? Which is the better arrangement?

2. Why does the State have both a Comptroller and a Treasurer?

3. What special reasons are there for a General Land Office in Texas?

4. Why are the duties of the Attorney General more onerous now than in the past?

5. Why does the State need a Superintendent of Public Instruction, and which of his duties do you regard the most important?

6. Consider carefully and come to a definite conclusion as to the need for each of the appointive State executive offices.

XI.

1. Why is a judicial department of government necessary?

2. Make an accurate definition of jurisdiction as applied to a court.

3. What is the necessity for courts of original jurisdiction? Of courts of appellate jurisdiction?

4. What good purpose is subserved by making the district courts courts of general jurisdiction?

5. Why are the most important cases put within the jurisdiction of district courts?

6. What is the necessity for having courts of probate? Why should such courts meet often?

7. Why does Texas need so many appellate courts?

8. What is the reason for requiring felony cases to be prosecuted by indictment?

9. What are the differences between an examining trial and a final trial on a criminal charge?

XII.

1. In what way do restrictive provisions in a constitution protect individuals?

2. Is there anything in the Constitution of the United States which protects an individual against State legislation in following matters: (a) As to freedom of speech. (b) Seizures or

searches. (c) As to trial by jury. (d) As to due process of law. (e) As to bail and habeas corpus?

3. What advantage is there in having the same guarantee in both the State and Federal Constitutions?

XIII.

1. What arguments are there in favor of public schools?
2. Why should such a system include all grades of schools?
3. What is the advantage of having a State Superintendent of Schools?

4. What is the advantage of having teachers submit to examination and procure certificates?

5. Why is it desirable to have special taxes levied for the support of schools, and why are the people of each school district permitted to determine this for themselves?

6. What are the advantages and disadvantages of independent school districts?

7. What advantage does the State receive from the maintenance of the common schools? Of the normal schools? Of the Industrial School for Girls? Of the Agricultural and Mechanical College? Of the State University?

XIV.

1. Why was it desirable at an early day for Texas to encourage immigration? What land laws did she pass for that purpose?

2. Why were so many of the lands granted in the early days of the Republic not surveyed? How has this disturbed titles later?

3. Why is it desirable to sell the school lands of the State?

XV.

1. Why cannot a State tax the salary of a Federal officer or the United States tax the salary of a State officer?

2. Why can taxes only be collected for public purposes?

3. Why is it desirable to have a maximum tax rate in a State Constitution?

4. Why are cities permitted to collect local taxes, and why is a maximum limit put on this tax?

5. Why is it important not to let the Legislature remit debts due to the State or counties?

6. Why are so many restrictions placed around railroad companies in the Constitution?

7. Why is a Railroad Commission regarded as necessary?

8. How can the combination in this Commission of legislative and judicial powers be justified?

PART FIVE.

MUNICIPAL LAW.

CHAPTER XXVII.

THE NATURE, SUBJECT-MATTER, SOURCE, FORMATION, EVIDENCE, RESULTS AND CLASSIFICATION OF MUNICIPAL LAWS.

Definition of Municipal Law. There are a great many kinds of law, as the word is used in common speech. We speak of Divine Laws, of Moral Laws, of Natural Laws, of Social Laws, and others. Though each of these has its influence upon and in a way enters into the formation of Municipal Law, none of them, nor any combination of them, of itself constitutes Municipal Law. "Municipal" primarily indicates pertaining to a walled city. Walled cities were once the most stable and effective governments the world knew, and hence, came to represent very aptly governmental authority. In this derivative sense we still use the adjective as applied to Law. A municipal law, then, is one which originates with sovereignty, and proceeds from it through governmental agencies to all those subject to control by it. It is the will of the sovereign represented in continuous rules of conduct, determining for all subject to the sovereign what they must and what they must not do; the rules which sovereignty makes whereby to control those whom it has the right to command.

Subject-Matter of Law. It is clear from these statements that the law regulates persons and their behavior, or conduct. It is these with which it deals. In its primary, or, as they are called, its substantive regulations,

it declares what persons shall do or shall not do, and what penalties shall be imposed for disobedience. In its secondary or adjective regulations it provides the means and methods of inflicting penalties when they are deserved.

Source of Municipal Law. Municipal law in republican governments has its origin in the judgments and consciences of the people. The sober, second thought of the people is the source of all law which abides; and no rule of conduct which does not abide is worthy to be called law. But this public sentiment and opinion is not law so soon as it springs up. It lacks authoritative form and sanction. The opinion must be transformed into law by proper political measures.

Formation of Municipal Law. These processes are of two recognized or regular kinds: first, enactments by the Legislature; second, recognition by the Courts.

If the Legislators elected by the people are really representative of them, they will have the same opinions and judgments as their constituents, and these will be expressed in the laws enacted. This is the simplest and most direct form of law-making. Laws thus made cover a great many of the facts and conditions which arise in life. In early times there were no regular legislative bodies, and many matters were unregulated by statutory law. When cases arose before the courts involving these matters they would be decided according to the customs existing among the people in similar cases. These customs were but the expression of public opinion, as they were the rules by which the great majority governed themselves when left to their uncontrolled choice of conduct. These decisions of the courts thus growing out of the customs of the people in turn began to be taken as evidence of customs recog-

nized in them, so that the fact that a certain matter had been decided in a certain way in former cases came at length to be regarded as convincing proof that the custom was in accord with the decisions. By this process the opinions of the majority passed from simple customs into customary laws, usually called the Common Law. When a number of these decisions of the courts were studied together it would be found that the same idea of right and honesty and public conscience which led to one of them led to others, and that taken together they represented certain general ideas and beliefs of right and wrong. These general ideas and beliefs are called principles, and, having been carried through custom into law, they are called legal principles.

When a case arose on matters regarding which there had been decisions these were followed. If a case arose which was different from all those previously adjudged, the judges would seek through their former decisions to find the general principles which those cases expressed, and would apply these previously recognized principles to the new facts, and decide according to them. This is a very brief yet fairly correct explanation of the origin of Common Law.

Evidences of the Law. The evidences of constitutional law as made by constitutional conventions are in the constitutions which they form and propose. The evidences of the law as enacted by legislatures are in the records of these bodies, or the authenticated copies of these laws thus enacted, published by the government. We know and speak of these as statutory or written law.

The evidences of customary or common law are the decisions of the courts in adjudged cases and the published reports of these decisions. Hence, the evidences of the law are the constitutions adopted by the people, the stat-

utes passed by the legislatures, and the decisions of the higher courts.

The Results of Law. The result of proper municipal law and its enforcement is to define and protect legal rights of the public and of individuals, and thus to establish and secure the public peace and the liberty of the people. The process may be illustrated in this way: In a community without law each man would deal with his neighbor just as he chose, so far as he had the power to enforce his choice. The stronger could overpower the weaker and make him serve him, or he could imprison or kill him, as he might prefer. The weaker would have no choice, or rather no protection in such choice. He could not have legal rights. But when a power from without intervenes and says to both the weak and the strong, you must each be governed by my judgment and my choice—I will say how you shall behave toward one another—then the strong must cease his oppression and the weak be allowed to enjoy the benefits of restraint upon his opponent. The intervening power in municipal affairs is sovereignty, and the express judgment and choice of sovereignty is law. To illustrate more specifically, if at the time the sovereign power asserted itself one of the strong was holding in subjection one of the weak, and the sovereign intervened by enacting and enforcing a law that all slaves must be set free, we readily see that the law, by declaring its rule of conduct for the master and by compelling him to obey, had given liberty to the slave. The process is similar in all cases. Putting restraint on the conduct of others protects and gives rights and freedom to those for whose benefit the restraints are imposed. The enjoyment of just rights on equality with others is Civil Liberty.

Classifications of Municipal Law: Criminal and Civil Law. One of the great classifications of law is into Criminal and Civil.

Criminal Law is the mass or sum of the rules which the sovereign makes to protect the public. Civil Law is the mass or sum of the rules which sovereigns make to protect individuals in their rights. It very frequently happens that the public and some private individual are interested in the same thing or matter. When this is so there will be both Criminal and Civil laws regarding it. Take the ownership of property. The public is justly interested in the protection of property. A community in which no one could own anything could not be a prosperous or a happy one. Hence, there are criminal laws protecting property. But every individual is specially interested in the things which he owns, and needs and is entitled to protection regarding them. Hence, there are laws protecting him in his private rights of property. To illustrate: If one man has a horse and another steals it, this is a crime against the public for which the thief may be punished. It is also a violation of the property rights of the owner of the horse, and for which he can have redress under the civil law.

Division of Civil Law. Civil Law is subdivided into two great divisions, which speaking roughly we may call Contract Law on the one hand and Non-Contract, or Tort Law, on the other.

Contract Law is the mass or sum of those rules which regulate the making, construing, and enforcement of agreements. Non-Contract or Tort Law is the mass or sum of those rules which regulate the private legal rights and duties of men in the absence of agreement. For example: If A meets B and asks him to loan him fifty dollars, promising to pay him back in a month, and B agrees

to let him have the money and does so, this is an agreement, and, speaking generally, A will be bound by his promise to B to repay the money. This binding promise is a contract. All the rules regulating the rights and duties of A and B growing out of that agreement are matters of Contract Law. Again, A meets B and strikes him and injures him. Here there is no agreement between the parties about the matter. A never promised B either that he would or would not strike him. The actions of the parties have no relation to agreement in any way. If the legal nature and effect of these acts is to be determined, we would have to examine the rules of Non-Contract or Tort Law. By ascertaining the facts in detail, and judging them by the rules of Tort Law, we could decide whether A had acted lawfully or unlawfully. If he acted lawfully, he would not owe B any damages. If he acted unlawfully, B would be entitled to have A pay him what he had suffered and lost as direct results of the blow.

Same Act as Affected by Different Kinds of Law. We must not have the idea that the separation of the law into classes is so complete that the same act can not be within the application of more than one of these sets of rules. We have just seen that the same act of taking the horse was both a violation of the criminal law and of the law of torts. The same act may be a crime, a tort, and a breach of contract. This is not often so, but occasionally it is. There is nothing in the nature or classification of law to prevent it.

Substantive and Adjective Law. Law is also divided into substantive and adjective. This division extends through all the classes we have considered above. That is, there is substantive criminal law, contract law, and

tort law; and there is adjective law of each of these classes.

Substantive Law consists of all those rules which define legal rights and determine the redress which may be obtained for their violation.

Adjective Law consists of all those rules which provide means by which to secure the redress which the substantive law allows, and which regulate the methods of obtaining it.

Thus, the laws which define ownership of property, and which determine to what extent an owner shall enjoy the use and benefit of the thing owned, and the remedy he is entitled to, if his right is molested, are substantive. The law organizing the court to which the owner must apply to obtain the provided remedy, and the rules of procedure in that court which control the trial of the case and the enforcement of its judgment, are adjective.

Further Classifications of Municipal Law. There are a number of other classifications of Municipal Law, which result in the frequent use of many qualifying or explanatory terms in connection with it. It is not expedient to take these up in detail, but a few of them should be dealt with briefly.

Written Law is all law which has proceeded from direct action of legislative power. It includes constitutions ordained by the people, and statutes enacted by the legislature.

Unwritten Law includes all the law which has grown up from the customs of the people and their adoption and enforcement through the courts.

Common Law means, in some uses, the whole body of the unwritten law. When used in contrast with Equity it means so much of the Unwritten Law as was enforced

in and through the ancient English courts which existed before the establishment of Courts of Equity. When used in contrast with Roman Law it means the whole body of English jurisprudence.

Equity is that system of law which is administered through Courts of Equity, or Chancery Courts, as they are also called. It is of much later origin than the Common Law, and is a system built up in England, and adopted in the larger part of America, for the purpose of recognizing and enforcing rights which the ancient common law ignored, and of giving remedies which could not be gotten from Common Law Courts. Its rules are supposed to have originated in the conscience of the King, and are announced by the Chancellor as the representative of the King. In course of time, however, these rules have become fixed by precedent, and are now as well settled as and can no more be enlarged or departed from than the doctrines of the Common Law.

Roman or Civil Law is the system of law established by Rome in the days of her supremacy, and perpetuated with various modifications through and in the nations of central, southern and southwestern Europe and their American dependencies. It is of peculiar interest in Louisiana, Texas, New Mexico, Nevada and California, as it had been in force in these sections before their settlement by Anglo-Americans, and their laws are now largely influenced by it. The term Civil is often used to indicate Roman Law. This use of the word must be kept in mind and distinguished from its meaning when used in contrast with Criminal Law, as is done in one of our preceding paragraphs.

Military Law is that which governs the armed forces of the United States; that is, the standing army and navy, and the militia when in active service. It has no application to any one not in the military service.

Martial Law is that which is enforced by military commanders in the government of communities in which for some cause the civil officers and courts can not perform their duties. It is a substitute for ordinary municipal law, to prevent temporary anarchy, which would otherwise exist. It should never be continued longer than is made necessary by the existing conditions.

RECAPITULATION.

Municipal law consists of the rules made by sovereignty whereby to control those whom it has the right to command.

The subject-matter of municipal law is persons and their conduct.

Municipal law in a republic has its origin in the common judgment and sense of right of the people.

Municipal law is formed by direct act of the people, as in adopting a constitution, or by the customs of the people, recognized by the courts.

Municipal law, by defining and protecting just rights, develops liberty.

Criminal law consists of the rules which sovereignty makes in order to preserve good order and protect the rights of the public.

Civil law consists of the rules which sovereignty makes to protect the private rights of individuals.

Contract law regulates the making, construing and enforcing of agreements.

Tort law regulates the privileges, rights, and duties of individuals which do not depend directly on contract.

Substantive law determines what rights a person has under the law.

Adjective law provides the means and regulates the proceedings by which substantive rights are protected.

Written law includes all constitutions and statutes.

Unwritten law includes all law originating in custom and declared by the courts.

Common law has three meanings: first, all English jurisprudence; second, all the unwritten English law; and, third, the law administered in law courts as distinguished from equity.

Equity includes the rules of right and wrong enforced through courts of chancery, and is supposed to be based upon the King's conscience.

Roman law is the laws of Rome as modified by the various Latin peoples.

Military law is that which controls the army and navy.

Martial law is that which is administered by officers of the army and navy in a community under their control, for the purpose of preventing disturbances and crimes.

QUESTIONS.

I. 1. Define municipal law. 2. Why is not public opinion law when it is first formed? 3. How is the unwritten law made? 4. What are the results of the establishment and enforcement of good laws?

II. 1. Why is it desirable to divide law into classes? 2. Name the different classifications, and explain each. 3. Give an example of an act which is contrary to both criminal and tort law.

III. 1. What three names does common law have? 2. What is equity, and what was its origin? 3. Why is knowledge of Roman law important in Louisiana, Texas and California? 4. What are the differences between military and martial law?

CHAPTER XXVIII.

LEGAL RIGHTS AND THEIR CLASSIFICATION.

Importance of Legal Rights. If it is true, as heretofore stated, that the purpose and result of good govern-

ment is to determine and protect legal rights, and thus to establish public order, justice and liberty, the importance of legal rights is apparent, and some understanding of them most desirable.

Definitions of Legal Rights and Duties, and Their Relations to Each Other. A legal right is a claim or advantage the enjoyment of which is protected by law. The protection afforded to a right is never absolute. It extends only so far as is consistent with the general good of society, and as the just and equal protection of the rights of other persons will permit. Even the legal right to life is not absolute. The government may demand military service of its citizens, even though this involves danger to their lives; or the individual may forfeit his life by serious violation of law and may be executed for his offense.

The protection which the law gives to a legal right comes largely through the control which the law exercises over other persons regarding the protected claim or advantage. Thus the right which an owner has in his property is enjoyed principally by reason of the law requiring all others to leave the thing owned by him unmolested, and thus give him opportunity to use and enjoy it. This legal obligation resting on one person to respect and leave unmolested the rights of others is a legal duty. There can be no legal right unless some one is subjected to the legal duty to respect it, and there can be no legal duty unless some one has a legal right which the one owing the duty is bound to respect. A legal right and the legal duty of others to observe it are correlative.

Classification of Legal Rights. The claims and advantages in which individuals are protected by law are necessarily very numerous, and very different in nature

and consequence. This renders orderly arrangement of them imperative and difficult. As a result a great many classifications have been made, and a great many distinguishing words have been applied to different rights to indicate the different classes into which they have been separated. We will adopt the classification which is simplest and most helpful in understanding the law in its present state.

On this basis legal rights are classified as follows: Personal Rights, Rights against Particular Persons, Rights in Persons, Rights in Things, Political Rights, Civil Rights and Remedial Rights.

Personal Rights. These are those rights to which a person is entitled simply as a member of the human race and of society. They include bodily security; security to the mind; security to the moral nature; freedom of action; the right to contract; the right to acquire, hold and dispose of property; the right to carry on business; the right to form special relations; and freedom of thought, of conscience, of speech, and of reputation.

The individual is not protected to the same extent in regard to all these; but, so far as legal protection is extended, the claim or advantage is a legal right. All these rights exist in behalf of the person having them against the whole world. Every one must respect them. Some of these rights we will consider briefly.

Protection to the Body. The sovereign recognizes that the public is interested in the bodily well-being of every person, and, hence, there are many criminal laws made to punish injuries done to the body. The offenses thus punished extend from assault and battery through all intermediate grades to murder in the first degree. A battery is the unlawful application of force to the body of another with intent to injure him. An assault is a

real attempt to commit a battery. If an assault or battery is of a specially serious nature, it is punished more severely.

Homicide is taking human life. All homicide is not unlawful. An officer of the law may take life in the discharge of his official duty. A private person may kill another in proper self-defense or by accident. No one of these is a violation of law. Notwithstanding the foregoing facts, homicide is usually a very serious offense, with severe penalties attached. If it takes place under the influence of a sudden passion arising from an adequate cause, but which still is not sufficient to justify it, it is called manslaughter, and punished by a relatively short term in the penitentiary. If it is committed maliciously, it is murder, and is punished by longer imprisonment or by death. Besides the protection afforded the body under criminal law, there is a broader recognition of the individual's rights in his own body. This is protected by Tort Law.

In dealing with the body from this point of view we may say that the very general rule is that the application of force by one person to the body of another is unlawful, and will subject the person applying the force to suit by him to whom it is applied. This rule is subject to five exceptions.

First. The use of force is not unlawful and actionable when applied in obedience to the commands of the law, as when an officer arrests a criminal under a proper warrant.

Second. When it is applied in proper self-defense.

Third. When it is applied reasonably by one having special authority to do so, as by a parent in the moderate chastisement of his child.

Fourth. When it is applied under the license of the

law, or of the person subjected to it, as in case of the ordinary contacts of life, or by a surgeon to a patient, and,

Fifth. When it is the result of an inevitable accident; that is, where it occurs without any legal fault on the part of any one, as in case of a cyclone blowing a passenger car over and injuring passengers.

Freedom of Action. The State also protects the individual in his freedom of action. No man is allowed to go where he pleases, but sovereignty claims and exercises the exclusive authority to determine for itself to what extent each individual shall be restrained.

Any restraint imposed by one individual upon another, beyond or in addition to that commanded or permitted by law, is an invasion of his legal right, and punishable criminally, and will support a civil action. This wrong is called false imprisonment.

Right to Contract. This is the privilege of acquiring, modifying or relinquishing other legal rights by agreement.

An agreement is a meeting of the minds of two or more persons, each having the same understanding and the same will, concerning the matter involved. It embodies both understanding and will. If the parties do not understand the matter alike, there can be no agreement. If, for example, one person has two horses, and offers to sell a certain one of them, but the person to whom the offer is made thinks that it applies to the other, and accepts it, there would be no sale. The owner has not sold the horse he intended to part with, because the other did not consent to buy it; and the purchaser has not bought the other horse, because the owner did not consent to sell it. This is a case of mistake.

Let us change the illustration somewhat. Suppose that

the owner of a horse finds that he is wild and vicious, and hence is of little value. He is not satisfied to take the real value for him; so, when he goes to sell him he claims that he is gentle and reliable, and by such false statements induces another to buy him. Here the parties both are dealing with the same horse. They have in mind the same price, but they do not alike understand the qualities of the horse. The seller knows that he is vicious. The buyer has been made by the seller to believe that he is gentle. There is no genuine agreement which the law will enforce against the buyer. This is a case of fraud. Both the foregoing illustrations show failure of mutual meeting of the minds of the parties.

Let us take another illustration. One person makes an unjust claim to property which really belongs to another. He goes to the real owner, presents a pistol, and forces him to sign a paper setting out that the property belongs to the wrongful claimant, and promising to deliver it to him. Here both persons understand the facts alike, but there is no meeting of their wills. The one who signs the paper through fear does not really agree to the facts set out in it. He only signs it to prevent a greater evil, his serious bodily hurt. The paper is not an agreement. This is an example of coercion, or duress, operating not on the understanding, but on the will.

These examples show that mistake, which is innocent misunderstanding of the facts; or fraud, which is deception of one party by another as to material facts; or coercion, which is the overcoming of the will of one of the parties by force or threats, will prevent true agreement.

A legal, enforceable agreement is called a contract. The right to enter into such agreements is the right to contract.

This right is subject to limitations. These limitations relate to four matters connected with or involved in agreements. First, there must be competent parties to the agreement. An agreement by an insane person or an infant cannot ordinarily be enforced. Second, there must be consideration, real or implied by law. A consideration is something of value which the promisor gets or is to get, or something of value with which the promisee parts or is to part. A promise to make a gift is not enforceable by law. Third, the agreement must not be contrary to law. If one person promises to pay a certain sum of money for killing another, and the promisee kills the third person, he cannot sue for and recover the money which was promised him. Fourth, the agreement must be in the proper form. True, in most instances agreements may be made verbally, but the law may require them to be in writing; and, in those instances in which it does this, promises made in other ways cannot be enforced.

If an agreement is genuine and has the foregoing characteristics, the law will recognize and compel the parties to stand by it. By such recognition and enforcement the law protects the claims which each party to the agreement has against the other by reason of it. This makes these claims legal rights.

The right to contract is one of the most important and essential which men enjoy. Without it no business could be carried on, and society could not possibly sustain itself.

The Right to Acquire, Hold, and Dispose of Property. This right relates to the capacity to own things. It is not actual ownership of any particular thing which is a property right, but the right to own. If a pupil owns a book, the right he has in that book is a property right. If the teacher tells him he must buy a book, the capacity

in the pupil to buy is a personal right in him. He has this right to buy while he is on the way to the bookstore, though he does not then own any book at all. He buys a certain book, and the law recognizes his right to keep the title to it. This right to retain title to the book is a personal one also. He subsequently desires to sell the book. He has the right to do so. This is the personal right of disposition. If he finds another pupil who buys the book, the former owner, in selling the book, exercises his personal right of disposition of the book.

The property right of ownership of particular things will be considered later. This right to acquire, hold and dispose of property is also limited by law. A man can only acquire property in legal ways. He can own only certain kinds of things, and can dispose of them only according to law.

Right to do Business. The right to do business grows out of the right to contract and the right to acquire, hold and dispose of property. Doing business is only exercising these two rights in connection with each other. As each of these rights is limited, the right resulting from their combination is also limited. The State can restrict the kinds of business in which men may engage, regulating some and prohibiting others.

Freedom of conscience and of speech have been considered in connection with the Bills of Rights of the United States and of Texas.

Right to Reputation. Character is what a man really is, reputation is what he is believed to be. Every man is legally entitled to a reputation equal to his character. No one should make a false defamatory statement against him. If he does, it is actionable. To this there are two exceptions, called privileged communications. The first exists as to the false statements made by an officer of

the Government in the discharge of his official duty, as by a Legislator in the course of a debate. This privilege has no limitations, and is called absolute. The second exists as to statements by private persons made in good faith on a subject on which it is his duty to speak, which statement he believes to be true, but which proves to be false. This privilege is limited. If the statement is made in bad faith or with malice, the exception does not apply and the person making the statement is liable for the damages.

Rights Against Particular Persons. In calling the rights just considered personal, the word "personal" refers to the person who has the right. The word "person" in the class now being considered refers to the one who owes the duty to the one who has the right; for example, one person loans another a sum of money, which the latter promises to repay at a certain time. By this transaction the lender acquires a legal right to demand and receive the money from the borrower when the payment is due, and the borrower assumes the correlative duty of making such payment. This right which the lender has to get back his money is not one which he can enforce against all persons, but it exists only against the borrower. It is therefore called a right against a particular person.

These rights usually arise from contract. They include the whole of those important and varied rights which one party to a contract has against the other party, because of the unperformed promises contained in the agreement. Every legally enforceable agreement results in one or more such rights. A few of these rights against particular persons exist without contract, as the rights which a parent has against his child, or a child against a parent. These are rights of imperfect obligation, which will be considered later.

Rights in Persons. This is a new classification of rights. It is not yet accepted by all, but it represents accurately certain classes of claims which cannot be placed conveniently or serviceably in any other class. These are claims and advantages which certain persons are recognized by law as having to and in the personal qualities and efficiency of others. They can only exist where there are special relations between the persons, such as parent and child, husband and wife, master and servant, etc.

A parent is legally entitled to the wages earned by his child during the latter's minority. He therefore receives advantages from the qualities in the child which enable him to earn wages. The law recognizes this fact, and if any other person unlawfully destroys or impairs these qualities in the child the parent thereby sustains legal wrong, and may sue for the loss occasioned him. On the other hand, the child is entitled to support and education from the father. If any one unlawfully kills the father, this under many modern statutes is a legal wrong against the child for which he may maintain a suit. These examples illustrate rights which one person has in another.

Rights in Things. These are rights of property usually expressed by the term ownership. Ownership in the fullest sense includes the right to possess, use, enjoy, profit by, modify and dispose of the thing owned. Thus, if a man owns a house, he can occupy it, and use it himself; can rent it to another and collect the rents; can change it to suit his own ideas, or he can sell it. This is the fullest title which the law knows. He who has such a title is called the general owner. In the illustration we spoke of the owner renting the house. By that is meant that the general owner of the house, by a contract with some one else, can permit that person to have the use and enjoyment of the house which belongs to the

general owner. This does not end the title of the general owner, but it limits it and gives the renter rights of property in the house. These rights of the renter are called special ownership. Special ownership is some one or more of the rights embraced in general ownership, existing for a limited time or to a limited extent, in one not the general owner. Almost anything can be owned. The exceptions usually given are human beings, air, natural light, and running water.

Political Rights. These are rights to participate in the exercise of political power. The most usual of them are the right to discuss political questions, to petition governmental officers, to vote, and to hold office. These have been sufficiently discussed in other connections.

Civil Rights. These are rights to equal protection of the law, to due process of law, and equal enjoyment of public privileges.

Remedial Rights are rights to remedy which arise in behalf of one having a right of any of the classes discussed above, whenever such right is invaded. It is a right to a remedy for the violation of a right of any other kind. Thus, if one man owns a piece of property and another takes it, the owner at once is entitled to a remedy against the wrongdoer for the injury done him.

RECAPITULATION.

A legal right is a claim or advantage which the law protects.

A legal duty is an obligation which the law enforces.

This protection and enforcement are accomplished by control of the conduct of individuals.

Personal rights are those which one has as a member of society.

The body is protected by both criminal and tort law. The general rule is that the use of force by one person

upon the body of another is unlawful. There are five exceptions in tort law, and more in criminal law.

The law imposes such restraint on the freedom of action of the individual as it regards necessary to protect the public and private persons, and it is unlawful for individuals to add to these.

The right to contract is the right to create, modify or destroy legal rights by agreement. This right also is limited by law in important respects, relating to parties, considerations, form and purpose.

Mistake is mutual misunderstanding of the parties. It prevents agreement.

Fraud is deception resulting in the disadvantage of the person deceived. It entitles the deceived person to avoid the agreement.

Duress or coercion is the overpowering of the will of the person coerced so that he signifies assent to that to which he does not really agree. It has the same effect as fraud.

The right to acquire and hold and dispose of property is the recognized capacity to become the owner of property, and to enjoy and use it, and pass the title to others.

The right to do business is subject to control of law. The sovereign can regulate different businesses, and, if they are harmful to the public, can prohibit them.

Reputation is what one is supposed to be. It should always be equal to character.

Telling a falsehood reasonably calculated to bring one into disrepute is defamation. If the statement is in writing, or print, it is called libel. If it is made orally, or by other transient means, it is slander. Some false statements are privileged absolutely, and some conditionally.

Rights in persons are claims or benefits which one person has in the life or capacities of another.

Rights in things are ownership of some kind. General ownership includes the right to possess, use, modify, profit by and dispose of the thing owned.

Special ownership consists of one or more of the rights going to make general ownership, enjoyed for a limited purpose or limited time.

Political rights are rights to share in sovereign power or its exercise.

Civil rights are rights to equal enjoyment of public conveniences and privileges.

Remedial rights are rights to redress for violation of any of the foregoing rights.

QUESTIONS.

I. 1. What is a legal right? 2. Are such rights absolute? Why? 3. How may the right to life be forfeited? 4. How can control of other persons result in establishment of legal rights?

II. 1. Enumerate the principal kinds of legal rights. 2. What are included in personal rights? To what extent does the law protect the body. 3. What is the difference between the legal capacity to acquire property, and actual ownership of a particular thing? 4. What is the right to contract? Is it of any importance in the business world? Why? In what four respects does the law limit the right to contract? 5. What is the difference between denying religious liberty and in punishing for acts committed in the name of religion? 6. What is the difference between character and reputation? To what reputation is a person entitled? Are there any exceptions?

III. 1. What are the differences between rights against particular persons and rights in particular persons? 2. If a child is injured so he cannot work, who loses his wage-earning capacity? 3. Who suffers the physical pain caused by the injury? 4. Ought the same person to collect for these two items? Why?

IV. 1. What is general ownership, and what component rights does it include? 2. What is special ownership of land? 3. Is the interest of the bailee in the thing bailed general or special ownership?

V. 1. Name the principal political rights. 2. Give an example of a civil right. 3. Of a remedial right.

CHAPTER XXIX.

SOME OF THE MORE IMPORTANT LEGAL DOCTRINES AND INSTITUTIONS.

Persons. The law deals with persons and their conduct, and these often affect and are affected by things. Persons are of two kinds: natural, which includes all human beings, and artificial, which includes such combinations of natural persons as the law recognizes as having legal rights and owing legal duties. Artificial persons are called corporations.

Normal persons are those who are under no restrictions or disabilities, either in fact or in law; in other words, ordinary persons. When persons have not normal capacity, or are so circumstanced that they cannot exercise their faculties to an ordinary degree, they are abnormal, and are said to be under disability. Some disabilities are actual, as insanity, infancy, drunkenness, duress, etc. Some are imposed by law, as in case of a capable and well-developed minor who is under twenty-one years of age. This is legal minority after the person is in fact capable of caring for himself. Marriage on the part of a woman belongs also to this class. The general rules of law are made for normal persons; but wherever disability exists the law takes it into account and modifies the general rules so as to protect the abnormal person from improvident conduct on his part, and from imposition by others.

Combinations of Persons. Natural persons are permitted by law to co-operate in many ways, and form combinations of many sorts. Some of the most frequent of these we will consider.

The Family. The earliest and most important of all human institutions is the family. The family is formed by marriage, and usually consists of a husband and wife and their children. The ties between them are the most sacred and enduring of all human relations. The different members of a family are dependent on each other for happiness and success to a very large extent. At common law the woman almost lost her legal identity by marriage, but this is changed very much in Texas.

The family has very real recognition in Texas. The homestead laws are for its benefit. Under these laws every family is entitled to a home, which cannot be taken from it for the payment of debts due by any of its members, unless the debt is for the purchase money of the home, for improvements made upon it, or for taxes due on it. The husband cannot sell the homestead unless the wife is willing and joins him in the deed. If the husband dies, the home, if there be one, must still be protected by the probate court in the administration of the estate. If the family has no home, the probate court must set aside money from the estate with which to buy one. This court must also let the family keep certain kinds of personal property, and enough provisions for a year.

In Texas the property of the husband and wife is governed very much as it was under the Spanish-Mexican laws in force there before 1836. All the property which belongs to the husband at the time of the marriage remains his. He also owns all the property which is given to him, or inherited by him, or which is willed to him, during marriage. The same is true as to the wife. All that she owns at her marriage, all that is given to her, or which she inherits, or which is willed to her, is hers. This property belonging to the husband and to the wife

respectively is called separate property. All other property which either the husband or wife acquires during marriage, in any other way than those stated above, belongs to both, each having an equal undivided interest in it, and is called community property.

During marriage the husband has control of the community property, with the right to sell it, unless it be homestead. He also has charge of the wife's separate property to manage, but he cannot sell it. He, of course, has control and power to sell his separate property, unless the home be on it.

Marriage does not affect the man's capacity to contract except as to the sale or the mortgage of his homestead. It has an extensive effect on the woman's capacity to contract. During marriage she can not make contracts except for necessities for herself or her children, for the improvement of her separate property, or in the disposition of her separate property. If the property is land, the husband must join with her in the sale; if it is personal property, this last point is not clearly settled.

The husband owes to the wife the duties of love, consideration, support and protection. The wife owes to the husband the duties of love, care, companionship and such reasonable assistance as their circumstances render proper.

Parents owe to their children the duties of support, care, education and proper training; and the children owe to their parents the duties of obedience, respect, and service.

Master and Servant. When one person employs another to do anything for him under his direction the employer is called a master and the employed a servant. This is a very common relation, and the duties due from each of these parties to the other are settled with rea-

sonable certainty. As the relation is formed by agreement the parties can usually fix these duties between themselves, but they rarely do this. In absence of such agreement the duties which the master owes the servant are to use reasonable care to furnish him a reasonably safe place in which to work, reasonably safe tools with which to work, reasonably competent fellow-workmen, and, if the employment is complicated, to make reasonable rules to govern him and his fellow-workmen in carrying on the work. He also must pay him the agreed wages or reasonable value of the service. The servant owes the master the duty to serve him faithfully, obey his orders, and to use reasonable care not to injure his premises or tools, or other persons.

Principal and Agent. When one person employs another to represent him in carrying on some business transaction the employer is called a principal and the employed an agent. The principal owes the agent the duty to deal fairly with him and pay him his compensation. The agent owes to his principal the duty of faithful observance of all his orders and instructions, of the utmost fidelity in accomplishing the purpose for which he is employed, of communication of all information which he gets in connection with the agency, and of accounting to him for all profits made in the agency business.

The servant represents the master, and the agent the principal, in performing duties for them; if, in such performance and within the scope of the employment, either unlawfully injures a third person, the master or principal, as the case may be, is responsible to the third person for such injury.

Partnership. A partnership is a combination of two or more persons who respectively contribute money, la-

bor and skill to a business enterprise which they conduct for their joint profit. The law does not look upon a partnership as a thing apart from its members, but regards the members of the firm as having all the rights and owing all the debts growing out of the partnership business. Each member is the agent of the firm to act for it in carrying on the business, and each is liable to all firm creditors for the full amount of the firm's debts. If one partner pays more than his share, he can force the others to repay him.

Private Corporations. Private corporations are created by the interested individuals, with the cooperation of the Government, for the purpose of accomplishing some definite object. There are certain advantages in this form of cooperation not in any other. Among these are concentration of power in the management, and, ordinarily, freedom from personal liability by the members for debts of the corporation. A corporation, as to its business operations, is dealt with by the law as if it were a being separate and distinct from its members, so that rights to which it is entitled are not regarded as rights of the members, and duties which it owes are not their duties. This is usually expressed by saying that a corporation is a legal entity, capable of sustaining legal relations in its own behalf. Almost all business corporations issue stock. Those getting up the corporation determine how much money will be needed to carry on the contemplated business, and fix on that as the amount of the capital of the corporation. Different persons promise to pay in such parts of the capital as they feel disposed. This is called subscribing for or taking stock in a corporation. In lieu of these promises, or the money if that is paid, the corporation gives them formal statements that they have promised to pay, or have paid, the respec-

tive sums subscribed, and are entitled to share in all the rights and benefits of the corporation in the proportion which their subscriptions bear to all the capital of the corporation. These rights in the corporate enterprise are shares of stock, and the statements issued by the corporation are called certificates of stock. The owners of stock are called stockholders or shareholders. Each subscriber for stock must pay the company the amount of his subscription. A part of it must be paid in cash. The balance is to be paid at the times stated in the subscription and charter of the company, if they provide for that. If they do not, it is payable at such times, and in such amounts, as the directors of the corporation determine. The amount which the directors require to be paid in at any one time are assessments, and the demand for it is a call. In Texas now one-half must be paid when the corporation is formed, and all within two years.

When the subscription is fully paid the stock becomes paid-up stock, and the holder ordinarily is not subject to any further assessment. In some corporations, as, for instance, National Banks, if the company fails, every holder of stock is liable to pay an additional sum equal to the stock held by him.

If the corporation succeeds, the profits it makes may be kept in the company to enable it to do a larger business, in which case they are called surplus; or they may be divided and paid to the stockholders in proportion to their stock, in which case they are called dividends. Shares of stock may be sold or otherwise disposed of by the owner. The effect of a sale is to substitute the purchaser for the seller in all future dealings with the corporation. Assessments made thereafter must be paid by the buyer, and dividends declared thereafter are paid to him.

After those desiring to form the corporation have secured sufficient subscribers for stock they take out a charter. It is the charter which gives the corporation life, and all its powers and privileges are determined by that. It cannot lawfully do anything not authorized by the charter.

The general policy of the corporation within the limits of its charter powers is determined by the stockholders, who ordinarily adopt its by-laws. They also elect the directors. These directors are a board of managers, who have actual control of the corporate affairs. They select the officers and general representatives of the corporation.

A corporation can only act through agents, and it is entitled to the benefit of their lawful acts and subject to liability for their unlawful acts, just as a natural person is for the conduct of his agents.

Common Carriers. A common carrier is one who carries goods and passengers as a business for all who desire to patronize him. He does not have to carry all sorts of goods, or to all places, or over all routes, or with all kinds of vehicles; but, within the limits of the business he holds himself out as doing, he must carry for all without unjust discrimination either in the services rendered or the charges made.

The law imposes on a common carrier very great responsibility. He is practically an insurer of the safe delivery of goods entrusted to him; that is, he must deliver such goods uninjured at the point of destination within a reasonable time after he receives them, and cannot excuse himself from liability for injury to them unless he can prove that the injury was caused by natural causes, operating in such unusual and unprecedented manner that the occurrence could not have been fore-

seen and prevented, as a cyclone; or by the nature of the thing shipped, as the natural decay of fruits; or by a public enemy, as in case of war or an insurrection; or by some wrong of the person making the claim, as that he had stolen the goods; or by the action of the law, as when the goods are taken by an officer under command of a lawful writ.

A common carrier of passengers is not an insurer of their safety, but he must use the highest practicable care for them.

Property. Things owned are called property. Land and things permanently attached to it are called real property. Things attached to land are called fixtures. If the attachment is permanent in fact, or in legal presumption, it is called a permanent or immovable fixture, and is regarded as a part of the land. If not so attached, it is called movable, and is not land. All property not real is personal or movable property.

The highest right which a person can have in a thing is called general ownership. A right in property less than general ownership is called special ownership. A legal claim, interest or right which one has to real property is called an estate. Real estate is estate in land which continues for an indefinite period, and which may be inherited by the heirs of the owner. The highest form of real estate is a fee simple.

Estates in land may be acquired by inheritance, by will, or by conveyance. Conveyances of estates for longer than one year must be in writing. Such a writing is, in Texas, called a deed. Ownership of personal property may be acquired in many ways. The most frequent are: by production, as a book written, or a crop raised; by increase of property already owned, as wool grown on

sheep, or the calves in a herd of cattle; by inheritance, devise, gift, exchange, or purchase.

Many kinds of special ownership in personal property are called bailments. A bailment always involves the idea that the ownership of the property is in one person and its possession in another. The owner is called the bailor and the one in possession the bailee. Bailments are of three general kinds, those for the benefit of the bailor exclusively, those for the benefit of the bailee exclusively, and those for the benefit of both. In the first class the bailor is required to use only a slight degree of care for the safety of the thing, in the second he must use a high degree of care, and in the third only ordinary care.

Contracts. As previously stated, a contract is an agreement enforceable at law. To be enforceable the agreement must be real, involving genuine concurrence of the minds of both parties; that is, the seeming agreement must not be based on mistake of any material fact, and must not have been secured by fraud or duress by the person seeking to enforce it. It must be between legally competent parties, based on legal consideration, have lawful purpose and be in proper form.

Mistake needs no explanation. Fraud is deception resulting in unfair disadvantage to the person deceived. It is the deception, and not the means or artifice by which it is produced. The common law denies any relief to the deceived person unless the other knew the statements made were false and intended to deceive. In Texas relief is not limited to cases of intended wrong. The controlling question with us is, actual deception on a material point, brought about in such way that the person getting the benefit from it is responsible therefor.

Fraud avoids contracts induced by it, if the defrauded

person desires to give it this effect. It cannot be taken advantage of by the wrongdoer. Sometimes two or more persons conspire together to defraud another. In such case the fraudulent act is invalid as against the person sought to be injured. It, however, frequently changes the rights of the fraudulent conspirators, for the law will not make any settlements between them, so if one has gotten advantage in the transaction, the other cannot compel any accounting by him. For example, if a person who is in debt makes a deed to property to another without getting anything for it, but with intent to defraud his creditors, the creditors can still proceed against the property and sell it for the debts; but, if they do not, the debtor cannot compel the other to reconvey the property to him.

Coercion is an overpowering sense of danger produced on the mind by force or threats of violence which prevents the free action of the will and constrains the person subjected to it to do that which if he were left to his own volition he would not do. It renders all agreements induced by it invalid against the coerced party, who is always legally entitled to be relieved from them if he acts promptly.

All normal persons may make contracts. Persons under disability ordinarily cannot; in exceptional kinds of cases they can. Persons under disability are married women, minors, insane persons, habitual drunkards, and persons actually drunk. The power of married women to contract has already been considered. Minors are not bound by agreements except for necessities, and then only for the real value, not the agreed price. In all other cases a minor can repudiate the agreement. If he had anything which he had received under the agreement in his possession when he became of age, and afterward seeks to avoid the agreement, he must restore it.

The rules as to insane persons and habitual drunkards are the same as to minors, except that the other party to the agreement must know or have notice of the disability at the time of making the agreement to render the agreement voidable. Persons actually drunk when agreements are made can repudiate them by making restitution, unless they were for necessities.

Consideration is anything of pecuniary benefit to the promisor, or hurt to the promisee. It need not be duly proportionate to the promise, or to the thing to be received under the promise. That is largely a matter of business capacity, though in cases of gross disproportion it takes but little additional evidence to show fraud. At common law written instruments under seal imported consideration; that is, the presence of the seal raised a presumption of consideration, and made the agreement good on this point, whether there was in fact any consideration or not. This has been changed in Texas, and now any written agreement carries with it a presumption that it is supported by consideration; but the real facts may be shown, and if there was really no consideration, the agreement ordinarily cannot be enforced.

Agreement to be enforceable must not be contrary to law or public policy. The State cannot afford to give its countenance and aid to attempts to violate the law. This it would do if it recognized and compelled performance of such promises.

Most agreements are good though evidenced only by words, or even by conduct. There are a few kinds, however, which are required to be in writing. These are, conveyances of estates in land for longer than one year; promises by an administrator to pay debts of the estate out of his own means; agreements which are not to be per-

formed within one year, and agreements to pay the debts of another person.

An agreement conforming to all the foregoing requirements creates legal rights, and can be enforced through the courts.

Law Merchant Contracts. There is another class of contracts which are entitled to special notice. These are those evidenced by the different kinds of commercial paper which are designed to pass from one person to another in the ordinary transaction of business. There were no such contracts at early common law. Later they were introduced into England by merchants from the Continent. These merchants brought their own business rules or customs with them. These to a large extent were reluctantly adopted by the English courts in dealing with these kinds of contracts. So these special rules are known as the Law Merchant, and the contracts specially governed by them as contracts of the Law Merchant. These contracts are negotiable notes, bills of exchange, and checks. To be in either of these classes the contract must be in writing, and of such kind that the law interprets it as an absolute promise to pay a certain sum of money to a certain person at a certain time, and must in addition show on its face that the person in whose favor it is made can substitute another for himself as the payee, either by simply delivering the paper to him, or by writing the payee's name upon the back of it. This capacity to pass from hand to hand is called negotiability, and distinguishes the kinds of papers we are now considering from all other contracts. The holder of negotiable paper may frequently pass to another a better claim under it than he himself has. This results from the Law Merchant doctrine regarding innocent pur-

chasers of such paper. Under this doctrine the negotiation of such paper before maturity for value to one who receives it in good faith and without notice of any defenses passes it freed from all such defenses, and the payor must pay the paper to him, and adjust his other claims with the one who sold the paper.

Torts. There are a great many legal rights which do not depend on contract. They are given or recognized by the law, and the duty to respect them is not based on any willingness or assent on the part of the one obliged, but rests solely on the will of the sovereign as expressed in law. Wrongs which violate these legally imposed duties and their correlative rights are Torts.

Such wrongs can be committed against any one who has legal rights existing independent of contract, and by any one on whom the law imposes duty without assent, and by any means by which wrongs may be done. Whenever a tort is committed the wrongdoer, who is called the tortfeasor, becomes legally bound to compensate the injured person for the actual injury suffered by him, and if the wrong was willfully and intentionally done, he may be made to pay additional penalties called exemplary or punitive damages.

The compensatory damages which the wrongdoer must pay are those which an ordinarily prudent person would have foreseen as the natural and probable results of the wrong. Beyond this the law does not go in fixing actual damage. Not only are persons, natural and artificial, responsible for torts committed by themselves, but also for those committed by others who are acting for them, when the wrong is done within the scope of the wrongdoer's employment. Thus a master must pay the damage done by his servant by committing torts within the ser-

vant's employment, and the principal, that done by his agent in carrying on his business.

A few of the more frequent torts will now be considered by way of illustration.

Negligence. This is one of the most frequent of all torts. It is negative in its nature, consisting in failure to use the degree of care which the law requires as a duty. It is not a state of mind, but is conduct. Its opposite is diligence. It may consist in doing that which due care forbids, or in failing to do that which it requires. Whenever the law demands the exercise of a certain degree of care as a duty, failure to exercise such care is negligence, and if any one to whom the duty is owing is injured it is a tort.

The standard by which the law measures the care to be required of a person under any circumstances is the man of ordinary prudence and judgment. Sometimes the lawmakers have applied the standard themselves, and declared that under certain circumstances a named degree of care must be used. For example, a common carrier of passengers is required as matter of law to use the highest practicable care for their safety.

Cases in which this application have been made are unusual. The jury is ordinarily left to use its own judgment as to what care an ordinarily prudent person would have used. As the standard by which care is measured is always the same the result of measuring different states of fact must necessarily be different, just as weighing different amounts of the same commodity with the same weight must give different results. Hence, it can never be known whether any one has been guilty of negligence in any matter until the facts are ascertained and measured by the legal standard of care. For example: On the same passenger train are passengers and a train crew.

The passengers pay the railroad company for the privilege and right of being carried safely over its road. The company pays the crew for operating its train. A wreck occurs, and a passenger and one of the crew are injured. Should the liability of the company to these parties be the same? Clearly not. An ordinarily prudent man handling appliances so dangerous as a railroad train, and having practical control of those who have paid him for service to them, would use extreme care for their safety; hence, this is the rule as to the passenger. The same man who had employed servants to care for others in his charge would not use the same kind of care for the employes. Hence, as to these the company only owes ordinary care.

Defamation. The publication of any false idea concerning another which is reasonably calculated to bring him into disrepute is defamation, and if it results in damages is a tort. Telling the truth is never defamation. Publication is conveying the idea to a person not the one referred to. It may be accomplished by speech, or writing, or print, or picture, or effigy, or wink, or nod, or by any other means by which thought can be conveyed. If the publication is made by transient means, as by speech or wink or nod, the tort is called slander; if by permanent means, as writing or print or picture, it is called libel.

False statements are sometimes privileged, as stated in connection with the right to reputation in Chapter XXVIII. If the idea communicated is such that it is presumed by law to result in damages, it is said to be actionable *per se*. If it is not presumed to be hurtful, damage must be shown.

Criminal Laws. There are a great many criminal laws—entirely too many to consider here. They are designed

to protect the public against evil men and their wrongdoing. Taken in their entirety, the criminal laws of a people and the manner and extent of their enforcement are a very fair index to the development the people have reached. In many States the codes indicate better conditions than do the attempts at enforcement. The States are gradually improving in both respects, and as intelligence and sense of civil responsibility increase the improvement will be more rapid.

RECAPITULATION.

Natural persons are human beings. Artificial persons are corporations.

Normal persons are those not under disability in fact or in law.

Abnormal persons are those under disability. They include the following: married women, minors, insane persons, and drunkards.

The family is the most important of human institutions. It is formed by marriage and usually consists of a husband, a wife and children.

Texas exempts the home of a family from forced sale for debts, except for the purchase money of the home, or for improvements made on it, and for taxes on it.

The separate property of each spouse is the property owned by him or her at the time of marriage, and that received afterwards by gift or by inheritance or by will. This belongs to the husband or wife, as the case may be.

Community property is all property acquired by the husband or wife or by both, after marriage, in any other way than one of those above stated.

During the marriage the husband has control of all community property, and of the separate property of himself and wife. He can sell his property and community

property unless it is homestead. He can control the separate property of the wife, but cannot sell it.

A married woman can contract for the benefit of herself or her children or of her separate property. She can sell her property if joined by her husband.

One who employs another to serve him under his control is a master. The one employed is a servant. The parties may fix their duties by contract; if they do not, the law fixes them.

One who employs another to perform a business transaction for him is a principal. He who is employed is the agent.

Partners are persons who have put together their capital, skill, and labor in some business for purpose of making money for them jointly.

Each partner has equal voice in the management of the business unless the partnership agreement provides otherwise. Each partner is responsible for all the debts of the firm.

Private corporations are recognized in law as legal entities. They have rights and owe duties. The members of business corporations are usually stockholders. Their rights and duties are in proportion to their shares of stock. They are not liable for the debts of the company beyond making payment in full for their stock. The directors of a corporation manage its business. Corporations are responsible for the acts or omissions of their employes, just as natural persons are.

A common carrier is one who holds himself out as carrying, within the limits of his business, for everybody who desires his services. When he carries freight he is practically an insurer, but may relieve himself by showing that the injury complained of was received by the

act of God, of the public enemy, by some defect in the thing shipped, by some wrong of the claimant, or by command of the law. A common carrier of persons must use the highest practicable care for their safety.

Things owned are called property. Land is the soil and everything permanently attached to it. All other property is called personal. The highest title to land is a fee simple.

A bailment is the holding possession of property belonging to one person by another.

Commercial paper includes notes, bills of exchange and checks. These papers must always be payable in money and be certain as to the parties and the amount and time of payment. They must be negotiable; that is, payable to order or to bearer. They import consideration, and are subject to the doctrine of innocent purchaser for value.

A tort is a wrong violative of a private legal right which does not depend directly on agreement. A person committing a tort is responsible for the directly resulting damages.

Actual damages are those really suffered. Exemplary damages are additional damages imposed because of the intentional or wanton nature of the wrong.

Negligence is the failure to use that degree of care which the law requires as a duty. The standard of care is the average man. Negligence must always be determined by the facts of the case.

The purpose of criminal law is to protect the peace and order of society, and the degree of a people's civilization may be judged by their criminal laws and the way in which they are enforced.

QUESTIONS.

I. 1. What is meant by a natural person? 2. What by an artificial one? 3. How does the law take into account legal disabilities?

II. 1. What is a family? 2. In what ways does the Texas law recognize the family?

III. 1. What is separate property? 2. What is community property? 3. Who controls community property during marriage? 4. To what extent can a married woman make contracts in Texas?

IV. 1. Who is a master? 2. What duties does he owe his servant? 3. What duties does the servant owe his master? 4. Why is a master responsible to third persons whom the servant hurts unlawfully in carrying on the master's business?

V. 1. What is a partnership? 2. Who owes the partnership debts? 3. If one partner pays all of a partnership debt can he get back any of the money, and, if so, from whom? Why?

VI. 1. What is a private corporation? 2. Who must take part in the formation of a corporation? 3. What is a share of stock in a corporation? 4. What is the capital of a corporation? 5. What is surplus? 6. What are dividends? Calls? 7. How are corporations managed?

VII. 1. Who is a common carrier? 2. What is the duty of a common carrier of freight? What will excuse him from doing this? 3. What care does a common carrier owe to passengers being carried by him?

VIII. 1. What is land? 2. What is personal property? 3. What is a fee simple title to land? 4. How may land be conveyed? 5. How may personal property be acquired? 6. What is a bailment? 7. Why does the law require more care in one kind of bailment than in another?

IX. 1. What qualities must an agreement have to make it a contract? 2. What is fraud? 3. What is its effect on an agreement induced by it? 4. Can an infant or an insane person make contracts? 5. What is a contract of the law merchant?

X. 1. What is a tort? 2. How does it differ from a breach of contract? 3. Against whom may torts be committed? 4. By whom? 5. What are compensatory damages? 6. What are exemplary damages and when are they allowed?

XI. 1. What is negligence? 2. What is the law's standard

by which to measure care? 3. Who ordinarily decides whether or not there is negligence in a case?

XII. 1. What is defamation? What is libel? What is slander?

XIII. 1. What is the general purpose of criminal law? 2. How does the nature of the criminal law made by a community show the character of the community itself?

THOUGHT QUESTIONS FOR REVIEW.

I.

1. In a democratic government, why is not public opinion law?
2. What is meant by the statement that in such a government public opinion is the source of law?
3. Why must there always be two methods of forming law in a democracy?
4. What are meant by legal principles and how are they ascertained?
5. How do legal rights grow out of legal rules of conduct?

II.

1. Why is it convenient to classify law?
2. Why do we need both criminal and civil law?
3. Why do we separate civil law into contract and tort law?
4. Is the classification into substantive and adjective law based on any real differences in these laws, or is it arbitrary?
5. Why is the law evidenced by the reports of decisions of courts called common law? Why is it also called unwritten?
6. What was the origin of equity as a system?

III.

1. Why is it impossible for one person to have a legal right unless another owes him a legal duty?
2. Why is it necessary to classify legal rights?
3. Are the different classes of rights as given in the text mutually exclusive, or do some of them overlap?
4. Why does the law protect the body more effectively than it does the mind? Why is it necessary to have exceptions to the general rule that application of force to the body of another is unlawful?
5. Why is it necessary to allow persons to change legal rights by agreement? Why is it necessary to limit this right? What is

the difference between the understanding and the will? Why is recognition of this difference necessary in contract law?

6. On what principle can the States' right to regulate or in some instances to prohibit business be sustained?

IV.

1. Distinguish between rights against particular persons, rights in particular persons and rights in things.

2. Can our present civilization be maintained without the recognition of property rights? Has the State any right to limit property rights in any way? Can property rights exist except as a result of law limiting the conduct of other persons?

3. How do the States' powers of taxation and eminent domain limit private ownership?

V.

1. Why does the law make different rules for normal and abnormal persons?

2. Why is the family necessary to civilization?

3. What is the underlying principle of the homestead law?

4. Why is the tendency of the law toward the enlargement of the rights of married women?

VI.

1. Could the business of the world be carried on without permitting one person to act and exercise many of his legal rights through others?

2. To what extent does justice require that the master or principal shall be responsible for the conduct of those acting for him?

3. Why should individuals be allowed to form partnerships without special authority, and be denied the privilege of forming corporations in the same way?

4. What is meant by a corporation being a legal entity?

5. What is a share of stock in a corporation, and what rights and liabilities go with it?

6. On what principles of policy and justice can the special control of common carriers be sustained? What is meant by a common carrier of freight being an insurer of its safe delivery? Why is it just to allow him the five defenses set out in the text?

VII.

1. Why is land regarded as the most important kind of property?

2. Is it good policy to recognize the right of an owner to attach things to the soil and thus make them parts of the land?

3. Why does the law class movable things as personal property?

4. Why does the law require a different amount of care in the different kinds of bailments?

5. Why does the law require written conveyances of land and not of personal property?

VIII.

1. Why does mutual mistake prevent agreement?

2. What is the effect of fraud or duress upon agreement? Why is this?

3. Why does the law require contracts to be in writing and certain in every respect before it will recognize them as negotiable?

IX.

1. What is a tort? Why may persons under legal disability be guilty of tort?

2. What redress does the law give for torts committed unintentionally or in good faith? What when done willfully?

3. On what principle and to what extent is a master responsible for torts committed by his servant?

X.

1. Is negligence a state of mind or conduct?

2. What amount of care does the law require one person to use for the safety of another?

3. Is this just, or should a person injured unintentionally by another bear the loss himself? Could there be any middle course between these?

4. In any given case how does the law determine whether or not conduct is negligent?

5. Why is a person entitled to protect his reputation?

6. What is the difference between reputation and character?

7. Can telling the truth ever bring one's reputation below his character?

8. Ought telling the truth ever to be a tort?

9. What exceptions are made to one's right to recover damages for defamation?

10. Is this good policy?

INDEX.

- Adjutant General, 266
- Agreements in writing, 379-80
- Agriculture, Commissioner of, 266
- Agricultural and Mechanical College, 305-06
- Alamo, 226
- Alien, 58
- Allegiance, 58, 61
- Appeal, Procedure on, 281
- Appeals, *see also* Circuit Court of Appeals; Civil Appeals, Courts of; Criminal Appeals, Courts of
- Appellate courts, 37
- Appropriation, State, 52
- Aristocracy, 7, 14
- Arms, right to bear, in Texas, 294-95
- Army, Standing, 44
- Assessment of Taxes, *see* Taxation
- Attorneys, 280-81
- Attorneys, *see also*, County Attorneys; District Attorneys
- Attorney General (Texas), 262-63
- Austin, Stephen F., 224-25
- Bail, 292
- Bank notes, 136
- Banks, National, 136; 151-52
- Bill, Passage of a, 33-34
- Bill of Rights, *see* Texas, Constitution, *Text*
- Bonds (U. S.), 135
- Burnett, David G., 226-27
- Cabinet (U. S.), 36; 162-63
- Carriers, Common, 375-76
- Carriers, Regulation of, 141-43
- Certificates, gold and silver, 136-37
- Cities and towns, 214; 331
- Citizen, 58
- Citizenship, 59; 63-64
- Civil Appeals, Courts of (Texas), 281-83
- Circuit Courts of Appeals, 173-74
- Circuit Courts (U. S.), 174
- Civil law, 351
- Coercion, 378
- Coinage, 133-34
- Coke, Richard, 236
- Commerce, 140-41
- Committees, Legislative, 34
- Commercial paper, *see* Contracts, Law Merchant
- Commissioners Court, *see* County Commissioners Court
- Comptroller of Public Accounts (Texas), 261-62
- Confederation, 18
- Confederation, Articles of, 89
- Congress, Continental, 86; 88
- Congress (U. S.), 113-115
- Congress (U. S.), Power of, 127-28
- Congress (U. S.), *see also* Senate (U. S.), House of Representatives (U. S.)
- Consideration, 379
- Constitution, American, 27
- Constitution, Amendments to Texas State, 340-41
- Constitution, English, 26
- Constitution, U. S., 27; Amendments, 110; 193-94; First constitutional convention, 95; guarantees of, 196-204; Interpretation of, 102; 104; Ratification of, 96-98; Restrictive provisions, 179-194
- Constitutions, State, 28; Written, 28-29
- Consultation of 1835 (Texas), 225
- Contracts, 186; 293; 377-78; 360-62
- Contracts, *see also* Agreements in writing
- Contracts, Law Merchant, 380-81
- Convention system, 73
- Conventions, *see also* Precinct conventions; County conventions; Delegate conventions
- Copyright, 148-49
- Corporations, Charter of, 152-53; Private, 204; 373-75; *see also* Municipal Corporations

- Counties, 210-211
 Counties in Texas, 331
 County Commissioners Court
 (Texas), 271-72
 County convention, 74-75
 County courts (Texas), 273-75
 County officers, 211; 277
 County Superintendent of Educa-
 tion (Texas), 308
 Courts, Procedure, 38
 Courts, *see* Justice of the Peace,
 Court of; Appellate Courts;
 Trial courts
 Criminal Appeals, Court of (Tex-
 as), 284
 Criminal law, 351
 Davis, E. J., 236
 Debts, Texas State, *see* Revenues,
 Texas State
 Declaration of Independence, 88
 Declaration of Rights, 86
 Defamation, *see* Libel
 Delegate conventions, 75
 Democracy, 8, 14
 Democratic party, 78
 Disqualification for office in Texas,
 245-46
 District court (Texas), 275-280
 District courts, U. S., 174-75
 Domicile and residence, 58-59
 Education, County Superintendent
 of (Texas), 308
 Education, Board of (Texas), 307
 Elections, Primary, *see* Primary
 elections
 Electors 121
 Eminent domain 53-54; 293
 Employer's liability, *see* Negli-
 gence
 Empresario system, 223
 Enabling acts, 106
 Enabling acts (Texas), 334-35
 England and the colonies, 84-85
 English Constitution, *see* Constitu-
 tions, English
 Equalization, Board of, 50
 Equity, 175-76; 354
 Executive department (U. S.), 35
 Executive officers (Texas), 259-68
 Executive department, State, 36
 Extradition of criminals, 201-02
 Family, 370
 Finance, Public, 46-53
 Fraud, *see* Contracts
 Government, Classification of, 20;
 Definition of, 1; 9; Depart-
 ments of, 32; Necessity for, 4;
 Popular, 21; Protection by, 58-
 62; Purpose of, 4
 Governor of Texas, 260
 Grand jury (Texas), 279
 Habeas corpus, 185-86; 292
 Health Officer, State (Texas),
 266-67
 Homestead exemption law (Tex-
 as), 229; 318; 370
 Homestead rights, *see* Pre-emption
 Homicide, 359
 House of Representatives (Texas),
 252-53
 House of Representatives, (U. S.),
 119-22
 Houston, Sam, 227
 Impeachment of President of U.
 S., 166
 Impeachment of Texas State offi-
 cial, 339-40
 Imprisonment for debt, 294
 Independence, Declaration of, *see*
 Declaration of Independence
 Indictments, 278-79
 Insurance, Statistics and History,
 Commissioner of (Texas), 265-
 66
 Interstate commerce, 141-43
 Interstate Commerce Commission,
 143-44; *see also* Carriers, Regu-
 lation of
 Judges, U. S., 176
 Judgment, 39
 Judicial department, U. S., 36;
 168-172
 Judicial districts (Texas), 276-77
 Justice of the Peace, Court of, 37;
 212-13; 272-73
 Land Office, Commissioner of the
 General (Texas), 262
 Land, Public, 52; 105

- Land registration, *see* Registration of land titles
- Land system in Texas, 315-320
- Law, Adjective, 352-53
- Law, Common, 175-76
- Law, Definition of, 9
- Law, Ignorance of, no excuse, 2
- Law, Interpretation of, 2
- Law Merchant Contracts, *see* Contracts, Law Merchant
- Law, Substantive, 352-53
- Law Suspension of, 295-96
- Law and Equity, 175-76
- Law, *see also* Civil, Criminal, Military, Martial, Municipal Law
- Laws of Texas, 228; Local, 256-57
- Legal tender, *see* Coinage
- Legislative Department, U. S., 32
- Legislature (Texas), 249-56
- Libel, 363; 383
- Liberty of speech, 187-88; 290-91
- Louisiana purchase, 221
- Married women's property (Texas), 370-71
- Martial law, 355
- Master and servant, 371-72
- Military law, 354
- Militia, 44
- Mississippi Lottery Co., 217
- Monarchy, 7; Absolute, 12; Constitutional, 13; Development of, 25
- Monopolies, *see* Trusts
- Murder, *see* Homicide
- Municipal corporations, 329-33
- Municipal law, 347-51; 353-54
- Naturalization, 60; 64; 149-51
- Negligence, 382-83
- Negro schools (Texas), 311
- Nominations for office, 72; 76-77
- North Texas State Normal College, 306
- Notes, *see* Bank Notes; Treasury Notes
- Officers, Civil, 45
- Oligarchy, *see* Aristocracy
- Ownership, 365; 376-77
- Pardons, 163
- Pardons, Board of (Texas), 266
- Party organization, 70
- Parties, Political, *see* Political Parties
- Patent laws 148-49
- Persons, 369
- Philippine islands, 109-10
- Police power, 54; 217
- Political parties, 68-69
- Postoffices, 131
- Prairie View State Normal and Industrial College, 306
- Precinct conventions, 73
- Precincts, *see* Justices precincts; Voting precincts
- Pre-emption (Texas), 318
- President, U. S., 159-60; Duties of, 163-66; Election, 160-62; Influence on Legislation, 122-24; Impeachment, 166
- Presidential electors, 121
- Presidency, Succession to, 166-67
- Primary elections, 76
- Private corporations in Texas, 333-335
- Probate jurisdiction (Texas), 274
- Property, *see* Ownership
- Property rights, 362-63
- Protection by government, *see* Government protection
- Public Instruction, Superintendent of (Texas), 264
- Public school system (Texas), 298-313
- Purchasing Agent (Texas), 267
- Quarantine, 145
- Railroad Commission, (Texas), 268; 338-39
- Railroads, Law governing, in Texas, 335-38
- Registration of land titles, 319-20
- Removal from office (Texas), 339-40
- Removal from Office, *see also* Impeachment, Disqualification for office in Texas
- Representative districts U. S., 122
- Representatives, Election of, 120-21
- Republican party, 78
- Residence and domicile, 58-59
- Revenue Agent, Texas, 267

- Revenues, Texas State, 326-29
 Rights in things, *see* Ownership
 Rights, Legal, 356-58; Personal, 358-66
 Roman law, *see* Civil law
 Sam Houston Normal Institute, 306
 San Jacinto, Battle of, 226
 Scholastic age in Texas, 311
 Santa Anna, 224
 School system (Texas), 298-312
 School lands (Texas) 318-19
 Search, Right of (Texas), 291
 Secession of Texas, 231-32
 Secretary of State, Texas, 264-65
 Senate, U. S., 116-119
 Servant and master, 371-72
 Senate (Texas), 251-52
 Sheriff (Texas), 278
 Sovereignty, 5; 102-03
 Sovereignty, Seat of, 7; 15
 Southwest Texas Normal, 306
 State, Federal, 19
 State, Political subdivisions of, 209-217
 State, Unitary, 17
 State, *see also* Confederation
 State Executive, *see* Executive Department, State
 States, Admission of, 107-08; 208
 State's rights, 6; 102-05; 190-92; 208-09
 Subject, 58
 Suffrage, 16; 61
 Suffrage in Texas, 243-44
 Supreme Court (Texas), 283-84
 Supreme Court, U. S., 104; 172-73
 Tax Commission (Texas), 268
 Taxation, 47-50; 200
 Taxation by Congress, 129-31
 Taxation, Texas State, 309; 320-26
 Teacher's certificates (Texas), 310
 Territorial enabling acts, *see* Enabling acts
 Texas Constitution, 226; 230-31; 232; 237
 Texas Constitution, Text, 238-44; 254-55; 263; 271; 290-6; 298-302; 315-17; 320-24; 326-31; 333-37
 Executive Department, 259-68
 History, 17; 108-09; 222-37
 Judicial Department, 271-86
 Jurisprudence, 228
 Land system, 316-20
 Legislature, 249-56
 Public school system, 298-312
 Restrictive provisions, 289-96
 Secession, 231-32
 Statehood, 223-24; 226
 Suffrage, 243-44
 Taxation, 320-29
 Towns, *see* Cities and towns
 Towns (Townships), 213-14
 Torts, 381-82
 Treason, 296
 Treasurer, Texas State, 262
 Treasury notes, 135-36
 Treaties, 164
 Trial courts, 37; 286-87
 Trials (Texas), 291-93; Examining, 284-86; New, 280
 Trusts, 144; 295
 United States Colonial Government, 83-84; Constitution, 27; 94-98; 102-104; House of Representatives, 119-20; Island possessions, *see* Philippine Islands; Senate, 117-19
 University of Texas, 304-05
 Veto, 34; 124-25
 Veto (Texas), 261
 Vote, *see* Suffrage
 Voting, *see* Suffrage
 Voting precincts, 213





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